



# आरत का राजपत्र

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No. 26]

NEW DELHI, SATURDAY, JUNE 28, 1997/ASADHA 7, 1919

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह इस दस्तावेज के हर में  
रखा जा सके।

Separate Paging is given to this Part in order that it may be filed as a  
separate compilation

**भाग II—खण्ड 3—उप-खण्ड (ii)**  
**PART II—Section 3—Sub-Section (ii)**

मारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएँ  
Statutory Orders and Notifications Issued by the Ministries of the Government of India  
(Other than the Ministry of Defence)

वित्त मंत्रालय

(राजस्व विभाग)

नई दिल्ली, 17 अप्रैल, 1997

(मुख्यालय स्थापना)

का. आ. 1621.—केन्द्रीय सरकार, केन्द्रीय प्रत्यक्ष कर बोर्ड  
(कारबाहर संचयवहार का विनियमन) नियमावली 1964 के नियम  
3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारतीय राजस्व  
सेवा (आयकर) के अधिकारी एवं वर्तमान में केन्द्रीय प्रत्यक्ष कर  
बोर्ड में सदस्य के रूप में कार्यरत श्री रविकान्त को दिनांक 16 अप्रैल,  
1997 (पूर्वान्हि) से श्रगले आदेश तक केन्द्रीय प्रत्यक्ष कर बोर्ड  
का अध्यक्ष नियुक्त करती है।

[का. सं. प. 19011/5/96-प्रका. I]

धारे लाल, अवर सचिव

MINISTRY OF FINANCE

(Department of Revenue)

New Delhi, the 17th April, 1997

(HEADQUARTERS ESTABLISHMENT)

S.O. 1621.—In exercise of the powers conferred by  
the Rule 3 of the Central Board of Direct Taxes (Re-  
gulation of Transaction of Business) Rules, 1964, the  
Central Government hereby appoint Shri Ravi Kant,  
an officer of the Indian Revenue Service (Income-  
Tax) and presently posted as Member, Central Board  
of Direct Taxes, as Chairman, Central Board of  
Direct Taxes with effect from 16th April, 1997 (fore-  
noon) and until further orders.

[F. No. A. 19011/5/96-Ad.I]

PYARE LAL, Under Secy.

## मुख्य आयकर आयुक्त का कार्यालय

कलकत्ता, 29 मई, 1997

अधिसूचना सं. 1/97-98

का० प्रा० 1622.—आयकर अधिनियम, 1961 (1961 का 43) की धारा 120 की उपधारा (1) तथा (2) के द्वारा और केन्द्रीय प्रत्यक्ष कर बोड़, नई दिल्ली के अधीन जारी अधिसूचना संख्या 9565 एफ सं. 279/129/93 आई० टी० जे० (पार्ट-2) विमांक 5-7-1994 और एस. ओ० संख्या 504 दिनांक 5-7-1994 और इस संबंध में मुझे प्रवक्त अन्य शक्तियों का प्रयोग करते हुए तथा ऐसे अधिक्रमण के पूर्व किए गए अथवा करने के लिये छोड़े गए कृत्यों को छोड़कर इस दिशा में जारी सभी पूर्व अधिसूचनाओं का आंशिक संशोधन तथा अधिक्रमण करते हुए मैं मुख्य आयकर आयुक्त, कलकत्ता एतद्वारा निर्देश देता हूँ कि संलग्न अनुसूची के कॉलम 2 में विनिर्दिष्ट इस क्षेत्र के आयकर आयुक्त (अपील) ऐसे व्यक्तियों के संबंध में अपने कृत्यों का पालन करेंगे जिनके आयकर अथवा धनकर अथवा धानकर अथवा व्याजकर अथवा व्यय कर अथवा संपदा शुल्क का निर्धारण कॉलम 3 में विनिर्दिष्ट आयकर प्राधिकारियों/निर्धारण प्राधिकारियों के द्वारा आयकर अधिनियम, 1961 की धारा 246 की उपधारा (2) के खण्ड (ए) से (एच) तक, धनकर अधिनियम, 1957 (1957 का 27) की धारा 23 की उपधारा (1-ए) के खण्ड (ए) से (ई) तक, धानकर अधिनियम, 1958 (1958 का 18) की धारा 22 (1ए) के खण्ड (ए) से (ई) तक, कम्पनी (लाभ) अतिकर अधिनियम, 1984 (1984 का 7) की धारा 11 की उपधारा (1), व्याजकर अधिनियम, 1974 (1974 का 45) की धारा 15 की उपधारा (1) और व्ययकर अधिनियम, 1987 (1987 का 35) की धारा 22 की उपधारा (1) और सम्पदा शुल्क अधिनियम, 1953 की धारा 62 में उल्लिखित किन्हीं आदेशों से व्यवित हों।

2. जहाँ एक आयकर सर्कल, वार्ड अथवा विशेष रेज मा उनके अंश इस अधिसूचना के अनुसार एक प्रभार से बूसरे प्रभार में स्थानांतरित हो गए हों, इस अधिसूचना के जारी होने के तुरंत पहले आयकर आयुक्त (अपील) के सभीप उन आयकर वार्ड/सर्कल/विशेष रेज अथवा उनके अंश में हुई निर्धारण से उद्भूत अपील लंबित हो तो इस अधिसूचना के लागू होने की तिथि से उन विशेष वार्ड/सर्कल/विशेष रेज अथवा उनके अंश से स्थानांतरित किये गए मामलों का निष्पादन उन आयकर आयुक्त (अपील) के द्वारा किए जाएंगे जिनके अधीन उक्त वार्ड/सर्कल/विशेष रेज अथवा उनके अंश स्थानांतरित किए गए हैं।

3. यह अधिसूचना विमांक 16-06-97 से प्रभावी होगी।

## अनुसूची

## आयकर आयुक्त (अपील) का सेवाधिकार

क्र०सं०	आयकर आयुक्त (अपील) का पदाधार	सेवाधिकार
1	2	3
01.	आयकर आयुक्त (अपील)---1, कलकत्ता	(क) आयकर उपायुक्त रेज-1 कलकत्ता के अधीन कार्यरत सभी निर्धारण प्रधिकारी। (ख) आयकर उपायुक्त विशेष रेज-2 कलकत्ता और/या आयकर उपायुक्त विशेष रेज-2 कलकत्ता के अधीनस्थ सभी निर्धारण प्रधिकारी। (ग) आयकर उपायुक्त विशेष रेज-22 कलकत्ता और/या आयकर उपायुक्त विशेष रेज-22, कलकत्ता के अधीनस्थ सभी निर्धारण प्रधिकारी।
02.	आयकर आयुक्त (अपील)-6, कलकत्ता	(क) आयकर उपायुक्त रेज-7 कलकत्ता के अधीन कार्यरत सभी निर्धारण प्रधिकारी। (ख) आयकर उपायुक्त विशेष रेज-1 कलकत्ता और/या आयकर उपायुक्त विशेष रेज-1 कलकत्ता के अधीनस्थ सभी निर्धारण प्रधिकारी।
03.	आयकर आयुक्त (अपील)-7, कलकत्ता	(क) आयकर उपायुक्त रेज-13 कलकत्ता के अधीन कार्यरत सभी निर्धारण प्रधिकारी।

1

2

3

- (अ) आयकर उपायुक्त रेंज-15, कलकत्ता के अधीन कार्यरत सभी निधारण अधिकारी।
- (ग) आयकर उपायुक्त, रेंज-21, कलकत्ता के अधीन कार्यरत सभी निधारण अधिकारी।
- (घ) आयकर उपायुक्त, विशेष रेंज-7, कलकत्ता और/या आयकर उपायुक्त विशेष रेंज 7, कलकत्ता के अधीनस्थ सभी निधारण अधिकारी।
- (च) आयकर उपायुक्त, विशेष रेंज-8, कलकत्ता और/या आयकर उपायुक्त विशेष रेंज-8 कलकत्ता के अधीनस्थ सभी निधारण अधिकारी।
- (क) आयकर उपायुक्त, जलपाइगुड़ी रेंज, जलपाइगुड़ी के अधीन कार्यरत सभी निधारण अधिकारी।
- (ख) आयकर उपायुक्त, विशेष रेंज-10, कलकत्ता और/या आयकर उपायुक्त विशेष रेंज-10, कलकत्ता के अधीनस्थ सभी निधारण अधिकारी।
- (ग) आयकर उपायुक्त, विशेष रेंज-21 कलकत्ता और/या आयकर उपायुक्त विशेष रेंज-21 कलकत्ता के अधीनस्थ सभी निधारण अधिकारी।
- (क) आयकर उपायुक्त, रेंज-10, कलकत्ता के अधीन कार्यरत सभी निधारण अधिकारी।
- (ख) आयकर उपायुक्त, रेंज-11, कलकत्ता के अधीन कार्यरत सभी निधारण अधिकारी।
- (ग) आयकर उपायुक्त, रेंज-20, कलकत्ता के अधीन कार्यरत सभी निधारण अधिकारी।
- (घ) आयकर उपायुक्त विशेष रेंज-12 कलकत्ता और/या आयकर उपायुक्त विशेष रेंज-12, कलकत्ता के अधीनस्थ सभी निधारण अधिकारी।
- (क) आयकर उपायुक्त रेंज-6, कलकत्ता के अधीन कार्यरत मिधारण अधिकारी।
- (ख) आयकर उपायुक्त, विशेष रेंज-2, कलकत्ता और/या आयकर उपायुक्त, विशेष रेंज-2, कलकत्ता के अधीनस्थ सभी निधारण अधिकारी।
- (ग) सहायक आयकर उपायुक्त (मनू), सर्कल 2(1) गुवाहाटी केन्द्रीय प्रत्यक्ष कर बोर्ड, द्वारा कलकत्ता को स्थानांतरित किये गए विशेष मामलों के संबंध में
- (घ) आयकर उपनिदेशक (छूट) कलकत्ता के अधीनस्थ सभी मिधारण अधिकारी।

## OFFICE OF THE CHIEF COMMISSIONER OF INCOME TAX,

Calcutta, the 29th May, 1997

Notification No. 1/97-98

S.O. 1622. In exercise of the powers conferred by the sub-section 1 & 2 of section 120 of the Income Tax Act, 1961 (43 of 1961) and the powers conferred on me by the Central Board of Direct Taxes, New Delhi, vide Notification No. 9565 F. No. 279/129/93 - ITJ (Pt. II) dated 5/7/1994 and S.O. No. 504 dated 5/7/1994 and all other powers enabling me in this behalf and in partial modification and in supersession of all earlier Notifications made in this behalf, except in respect of things done or omitted to be done before such supersession, I, the Chief Commissioner of Income Tax, Calcutta, hereby direct that the Commissioners of Income Tax (Appeals) of this specified in column 2 of the schedule attached hereto, shall perform their functions in respect of such persons assessed to Income Tax or Wealth Tax or Gift Tax or Sur-tax or Interest Tax or Expenditure Tax or Estate Duty by the Income tax Authorities/Assessing Officers specified in column 3 thereof as are aggrieved by any orders mentioned in clauses (a) to (h) of sub-section (2) of section 246 of the Income-tax 1961, clauses (a) to (e) of sub-section (1A) of section 23 of the Wealth tax Act, 1957 (27 of 1957), clauses (a) to (e) of sub-section (1A) of section 22 of the Gift-tax Act, 1958 (18 of 1958), sub-section (1) of section 11 of the Companies (Profit) Sur-tax Act, 1984 (7 of 1984), sub-section (1) of section 15 of the Interest-tax Act, 1974 (45 of 1974), sub-section (1) of section (22) of the Expenditure-tax Act, 1987 (35 of 1987) and section 62 of the Estate Duty Act, 1953.

2. Where an Income-tax Circle, Ward of D.C. Range or Special Range or part thereof stands transferred by this Notification from one charge to another, appeals arising out of the assessments made in that Income-tax Ward/Circle/Special Range or part thereof and pending, immediately before the date from which this Notification takes effect, before the Commissioner of Income-tax (Appeals) from whose charge that particular Income-tax Ward/Circle/Special Range or part thereof is transferred, shall from the date from which this Notification takes effect, be transferred to and dealt with by the Commissioners of Income-tax (Appeals) to whom the said Ward/Circle/Special Range or part thereof is transferred.

3. This Notification takes effect from 16-06-1997.

**SCHEDULE**  
**JURISDICTION OF THE COMMISSIONER**  
**OF INCOME TAX (APPEALS)**

Sl. No.	Designation of the Commissioner of Income Tax (Appeals)	Jurisdiction
(1)	(2)	(3)
1.	Commissioner of Income Tax (Appeals)—I, Calcutta.	<ul style="list-style-type: none"> <li>(a) All the Assessing Officers functioning under the Deputy Commissioner of Income Tax, Range-1, Calcutta.</li> <li>(b) The Deputy Commissioner of Income Tax, Special Range-11, Calcutta and/or all the Assessing Officers subordinate to the Deputy Commissioner of Income Tax, Special Range-11, Calcutta.</li> <li>(c) The Deputy Commissioner of Income Tax, Special Range-22, Calcutta and/or all the Assessing Officers subordinate to the Deputy Commissioner of Income Tax, Special Range-22, Calcutta.</li> </ul>
2.	Commissioner of Income Tax (Appeals)—VI, Calcutta.	<ul style="list-style-type: none"> <li>(a) All the Assessing Officers functioning under the Deputy Commissioner of Income Tax, Range-7, Calcutta.</li> <li>(b) The Deputy Commissioner of Income Tax, Special Range-1, Calcutta and/or all the Assessing Officers subordinate to the Deputy Commissioner of Income Tax, Special Range-1, Calcutta.</li> </ul>

(1)	(2)	(3)
3. Commissioner of Income Tax (Appeals)-VII, Calcutta.	(a) All the Assessing Officers functioning under the Deputy Commissioner of Income Tax, Range-13, Calcutta. (b) All the Assessing Officers functioning under the Deputy Commissioner of Income Tax, Range-15, Calcutta. (c) All the Assessing Officers functioning under the Deputy Commissioner of Income Tax, Range-21, Calcutta. (d) The Deputy Commissioner of Income Tax, Special Range-7, Calcutta and/or all the Assessing Officers subordinate to the Deputy Commissioner of Income Tax, Special Range-7, Calcutta. (e) The Deputy Commissioner of Income Tax, Special Range-8, Calcutta and/or all the Assessing Officers subordinate to the Deputy Commissioner of Income Tax, Special Range-8, Calcutta.	
4. Commissioner of Income Tax (Appeals)-X, Calcutta.	(a) All the Assessing Officers functioning under the Deputy Commissioner of Income Tax, Jalpaiguri Range, Jalpaiguri. (b) The Deputy Commissioner of Income Tax, Special Range-10, Calcutta and/or all the Assessing Officers subordinate to the Deputy Commissioner of Income Tax, Special Range-10, Calcutta. (c) The Deputy Commissioner of Income Tax, Special Range-21, Calcutta and/or all the Assessing Officers subordinate to the Deputy Commissioner of Income Tax, Special Range-21, Calcutta.	
5. Commissioner of Income Tax (Appeals)-XII, Calcutta.	(a) All the Assessing Officers functioning under the Deputy Commissioner of Income Tax, Range-10, Calcutta. (b) All the Assessing Officers functioning under the Deputy Commissioner of Income Tax, Range-11, Calcutta. (c) All the Assessing Officers functioning under the Deputy Commissioner of Income Tax, Range-20, Calcutta. (d) The Deputy Commissioner of Income Tax, Special Range-12, Calcutta and/or all the Assessing Officers subordinate to the Deputy Commissioner of Income Tax, Special Range-12, Calcutta.	
6. Commissioner of Income Tax (Appeals)-XI, Calcutta.	(a) All the Assessing Officers functioning under the Deputy Commissioner of Income Tax, Range-6, Calcutta. (b) The Deputy Commissioner of Income Tax, Special Range-2, Calcutta and/or all the Assessing Officers subordinate to the Deputy Commissioner of Income Tax, Special Range-2, Calcutta. (c) The Assistant Commissioner of Income Tax (Investigation) Circle-II(1), Guwahati in respect of the specific cases transferred by the Central Board of Direct Taxes to Calcutta. (d) All the Assessing Officers functioning under the Deputy Director of Income Tax (Exemption), Calcutta.	

[F.No.AC/HQRS/PLANNING/97-98/30]

K.P. SINGH., Chief Commissioner of Income Tax

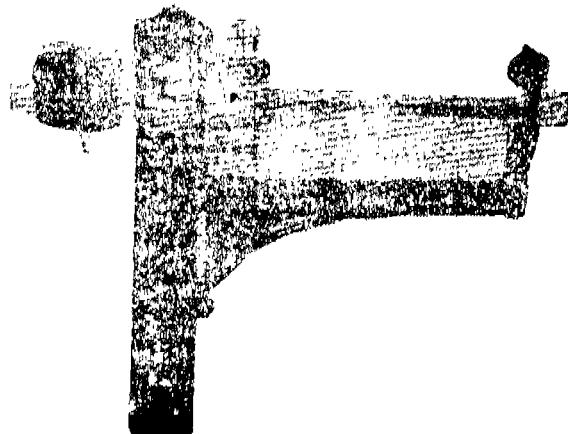
नागरिक पूर्ति, उपभोक्ता मामले और सार्वजनिक वितरण मंत्रालय

नई दिल्ली, 9 जून, 1997

का० आ० 1623.—केन्द्रीय सरकार का पिछले प्राधिकरणी द्वारा उसे प्रस्तुत की गई रिपोर्ट (भीषण धारुनि देखिया) प० विकार करने के पश्चात्, समाधान हो गया है कि उसके रिपोर्ट में वर्णित माडल बाट और माप मानक अधिनियम, 1976 (1976 का 60) और बाट और माप मानक (माडल का अनुमोदन) नियम, 1987 के उपबन्धों के अनुरूप है और इस नाम की भावना है कि वह लगातार प्रयोग की प्रवृत्ति में यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा देता रहेगा।

अस्त: केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उपधारा (7) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मध्यम यथार्थता वर्ग III की डब्ल्यू-404 सिरीज टाइप के “वेटेक्स” नाम वाले स्कैल:सूचक गैर-न्वचालित यांत्रिक प्लेटफार्म तोलन उपकरण के माडल का (जिसे इसमें इसके पहचात माडल कहा गया है) जिसका विनिर्माण मैसर्स वेटेक्स स्कैल्स, 1449, एम आई ई, बहादुरगढ़ (हरियाणा) द्वारा किया गया है और जिसे अनुमोदन वित्त अधीक्षण एन० ५२/९६/०९/०९० द्वारा ०९/०९/१९९७ किया गया है, अनुमोदन प्रमाण-पत्र प्रकाशित करती है।

माडल (आकृति देखिए) एक मध्यम यथार्थता (यथार्थता वर्ग III) का तोलन उपकरण है जिसकी अधिकतम क्षमता 3000 किलोग्राम और न्यूनतम क्षमता 10 किलोग्राम है। स्तरापन मापदण्ड अन्तर (ई) 500 ग्राम है। इसमें एक टेयर युक्ति है। आरग्राही वर्गाकार संवेशन का है जिसके पास्ते 1500—1500 मिलीमीटर है। तोल परिणाम किसी अनुरूप डायल सूचक या किसी शतशांत प्लाइज वाली स्टील धार्न पर देखा जा सकता है। यह उपकरण सीधरों के सिद्धांत पर कार्य करती है।



प्रकाश उत्सर्जन डायोड संप्रदर्श तोल परिणाम उपर्युक्त करता है: यह उपकरण 230 बोल्ट, 50 हर्टज के प्रत्यावर्ती धारा विद्युत प्रधाय पर प्रचालित होता है।

आगे, केन्द्रीय सरकार उक्त धारा की उपधारा (12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि माडल के अनुमोदन के इस प्रभाण पत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धांत डिजाइन के अनुसार और उसी सामग्री से, जिससे अनुमोदित माडल का विनिर्माण किया गया है विनिर्मित 500 किलोग्राम/200 ग्राम, 1000 किलोग्राम/200 ग्राम, 2000 किलोग्राम/500 ग्राम और 5000 किलोग्राम/1 किलोग्राम की अधिकतम क्षमता वाले समरूप मेक, यथार्थता और उसी सिरीज के कार्यकरण वाले तोलन उपकरण भी हैं।

[फा० सं० डब्ल्यू एम 21(44)/94]

राजीव श्रीवास्तव, संयुक्त सचिव

#### MINISTRY OF CIVIL SUPPLIES, CONSUMER AFFAIRS AND PUBLIC DISTRIBUTION

New Delhi, the 9th June, 1997

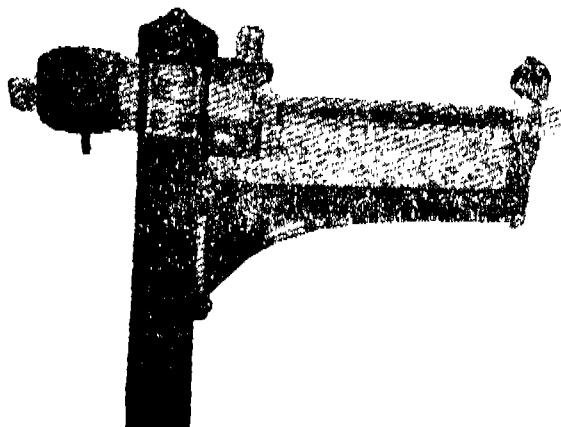
S.O. 1623.—Whereas the Central Government after considering the report submitted to it by the prescribed authority, is satisfied that the Model described in the said report (see the figure given below) is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said Model is likely to maintain accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by sub-section (7) of section 36 of the said Act,

the Central Government hereby publishes the certificate of approval of the Model of the self-indicating non-automatic, mechanical, platform weighing instrument of type W-404 series, of class III accuracy, (Medium accuracy) with brand name “WEIGHTEX” (hereinafter called the Model), manufactured by M/s. Weightex Scales, 1449, MIE, Bahadurgath, Haryana, and which is assigned the approval mark IND/09/96/52;

The said Model is a medium accuracy (accuracy class III) weighing instrument with a maximum capacity of 3000 kg and minimum capacity of 10 kg. The verification scale interval (e) is 500 gram. It has a mechanical taring device. The load receptor is of square section of side 1500 × 1500 millimetre. The results of weighment can be read on an analogue Dial

indicator or a Steel yard with moving poise. The instrument works on the principle of levers;



(figure)

Further, in exercise of the powers conferred by sub-section (12) of the said section, the Central Government hereby declares that this certificate of approval of the Model shall also cover the weighing instrument of similar make, accuracy and performance of same series with maximum capacity of 500 kg/200 g, 1000 kg/200 g, 2000 kg/ 500 g and 5000 kg/1 kg, manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the approved Model has been manufactured.

[File No. WM 21(44)/94]  
RAJIV SRIVASTAVA, Jt. Secy.

## दिल्ली विकास प्राधिकरण

## सार्वजनिक सूचना

नई दिल्ली, 23 जून, 1997

का. आ. 1624:—केन्द्रीय सरकार का दिल्ली की मुख्य योजना/क्षेत्रीय योजना में निम्नलिखित संशोधन करने का प्रस्ताव है, जिसे आम जनता को जानकारी के लिए एतद्वारा प्रकाशित किया जाता है। यदि किसी व्यक्ति को प्रस्तावित संशोधनों के सम्बन्ध में कोई आपत्ति/सुझाव देना हो, तो वे अपनी आपत्तियाँ/गुम्भारों को इस सूचना के जारी होने की तिथि से 30 दिन की अवधि के अन्दर आयुक्त एवं सचिव, दिल्ली विकास प्राधिकरण, विकास सदन, “बी” ब्लॉक, प्लाई. एन. ए., नई दिल्ली को लिखित स्पष्ट में भेज दें। आपत्ति/गुम्भाव देने वाले व्यक्ति को अपना नाम और पता भी देना चाहिए।

## संशोधन

(1) “जोन सी” (सिविल लाइन एरिया) के अन्तर्गत प्राप्त वाले लगभग 2.0 हेक्टेयर क्षेत्र, जो उत्तर-एवं पश्चिम में सीकरेज ट्रीटमेंट प्लांट, पूर्व में ट्रांस-

मिशन साइट और दक्षिण में “मनोरंजनात्मक खेत” से घिरा हुआ है, के भूमि उपयोग को “मनोरंजनात्मक” से “सार्वजनिक एवं प्रधान सार्वजनिक सुविधाओं” (समाजान भूमि) में बदला जाना प्रस्तावित है।

(2) जोन “ओ” (यमुना नदी) के अन्तर्गत आते वाले लगभग 35 हेक्टेयर (86.5 एकड़ी) क्षेत्र, जो उत्तर में रेलवे टाराफ़/प्रतापिता “मनोरंजनात्मक” (हरित पट्टी), दक्षिण में एन.एन.-34/प्रतापिता यनोरंजनात्मक हरित पट्टी, पूर्व में नाइटा को जोड़ने वाले सार्वजनिक बांध रोड एवं प्रस्तावित “मनोरंजनात्मक” (हरित पट्टी) और पश्चिम में यमुना नदी से फ़िरा हुआ है, के भूमि उपयोग को “कृषि एवं जल निकाय (ए-4) से “सार्वजनिक एवं प्रधान सार्वजनिक सुविधाओं” में बदला जाना प्रस्तावित है।

2. प्रस्तावित संशोधनों को दर्शनी वाले नक्शे उक्त अवधि के दौरान निरीक्षण हेतु संगुक्त निदेशक कार्यालय, मुख्य योजना अनुभाग, छठी मंजिल, विकास मोनार, प्लाई. एन., एस्टेट, नई दिल्ली में सभी कार्य दिवसों को उपलब्ध रहेंगे।

[सं. एफ. 20 (11)/94—एम. पी.]  
बो. एम. बंसल, आयुक्त एवं सचिव

## DELHI DEVELOPMENT AUTHORITY

## PUBLIC NOTICE

New Delhi, the 23rd June, 1997

S.O. 1624.—The following modifications which the Central Govt. proposes to make in the Master Plan/Zonal Plan for Delhi, are hereby published for public information. Any person having any objections/suggestions with respect to the in writing to the Commissioner-cum-Secretary, Delhi Development Authority, Vikas Sadan, 'B' Block, INA, New Delhi with a period of 30 days from the date of issue of this notice. The person making the objections/suggestions should also give his name and address.

## MODIFICATIONS

- “The land use of an area, measuring about 2.0 ha. falling in zone 'C' (Civil Line area), bounded by Sewerage Treatment Plant in the North and West, transmission site in the East and 'Recreational Area' in the South, is proposed to be changes from 'recreational' to 'Public and Semi Public facilities' (Cremation Ground).”
- “The land use of an area, measuring about 35 ha. (86.5 Ac) falling in zone 'O' (River Yamuna) bounded by Railway line/proposed 'Recreational' (Green Belt) in the North, NH-24 proposed Recreational Green Belt, in the South, Noida Link Marginal Bund Road and proposed 'Recreational' (Green Belt) in the East and the River Yamuna in the West, is proposed to be

'Agricultural and Water body' (A-4) to  
'Public and Semi Public facilities'.

2. The plans indicating the proposed modifications will be available for inspection at the office of the Joint Director, Master Plan Section, 6th floor, Vikas Minar, I.P. Estate, New Delhi on all working days within the period referred above.

[No. F. 20(11)94-MP]

V. M. BANSAL, Commissioner-cum-Secy.

श्रम मंत्रालय  
नई दिल्ली, 28 मई, 1997

का.आ. 1625.—श्रौद्धोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुम्बई पोर्ट इंस्ट के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबन्ध निविष्ट श्रौद्धोगिक विवाद में केन्द्रीय सरकार श्रौद्धोगिक अधिकरण सं. 1, मुम्बई के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 28-5-97 को प्राप्त हुआ था।

[सं. ए.न./31012/14/96-आई.आर. (विविध)]  
बी.एम. डेविड डेस्क अधिकारी

#### MINISTRY OF LABOUR

New Delhi, the 28th May, 1997

S.O. 1625.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, No. I Mumbai as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Mumbai Port Trust and their workman, which was received by the Central Government on 28-5-1997.

[No. L-31012/14/96-IR(Misc.)]

B. M. DAVID, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

##### PRESENT :

Shri Justice R. S. Verma, Presiding Officer.

REFERENCE NO. CGIT-1 OF 1997

##### PARTIES :

Employers in relation to the management of Mumbai Port Trust

AND

Their workmen.

##### APPEARANCES :

For the Management : Shri M. B. Anchan, Advocate.

For the Workman : No appearance.

Mumbai, the 15th May, 1997.

#### AWARD

Mr. M. B. Anchan for Management.

The appropriate Government referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of Mumbai Port Trust in retiring Shri Suleman Abdulla Shemle prematurely w.e.f. 30-6-95 is justified ? If not, to what relief is the workman entitled."

The workman has not filed his claim till day even though the reference was made on 13-12-1996 and copy thereof was endorsed to the workman.

Notices were issued by this Tribunal to the workman at the addresses given in the letter of reference. The notice sent by Registered Post has been received unserved with the remark 'Left'. In these circumstances, it is not possible for the Tribunal to serve a notice on the workman. The workman has not taken any steps to file the claim and it appears he is not interested in pursuing the matter. In these circumstances, a 'No dispute' award is passed. Copy of the award be sent to all concerned.

R. S. VERMA, Presiding Officer

नई दिल्ली 28 मई 1997

का.आ. 1626.—श्रौद्धोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इन्टरनेशनल एयरपोर्ट अथारिटी आफ इंडिया के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबन्ध में निविष्ट श्रौद्धोगिक विवाद में केन्द्रीय सरकार श्रौद्धोगिक अधिकरण सं. 1, मुम्बई के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 28-5-97 को प्राप्त हुआ था।

[सं. ए.न./11012/12/90-आई.आर. (विविध)]

बी.एम. डेविड डेस्क अधिकारी

New Delhi, the 28th May, 1997

S.O. 1626.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal No.-I, Mumbai as shown in the Annexure, in the industrial dispute between the employers in relation to the management of International Airport Authority of India and their workmen, which was received by the Central Government on the 28-5-1997.

[No. L-11012/12/90-IR(Misc.)]

B. M. DAVID, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

## PRESENT :

Shri Justice R. S. Verma, Presiding Officer  
REFERENCE NO. CGIT-79 OF 1990

## PARTIES :

Employers in relation to the management of IAAI, Bombay.

AND  
Their Workmen.

## APPEARANCES :

For the Management : Shri S. S. Patil, Advocate.

For the Workman : Shri Dongre, Advocate.

STATE : Maharashtra.

Mumbai, dated the Ninth day of May, 1997

## AWARD

1. The appropriate Government has referred the following dispute for adjudication to this Tribunal.

"Whether the action of the Management of International Airport Authority of India, Bombay in terminating the services of Mr. Prem-singh Chavaria, Sweeper w.e.f. 11-03-1986 is legal and justified. If not, to what relief the workman is entitled?"

2. Briefly stated, the case of the workman is that he was employed as a Sweeper by the International Airport Authority of India, Bombay, on 29-1-1983 on probation. After satisfactory completion of the probation period, he was confirmed with effect from 29-1-1984 vide communication dated 30-11-1984. It is pleaded that the workman had unblemished record during the course of service. However, by an order dt. 2-6-1996 the service of the workman were terminated with effect from 11-3-1986 on the ground that he had been absent from duty from 11-3-1986 without prior sanction of leave and that he had voluntarily abandoned his post. The termination is said to have been effected vide order Ex-A dated 2nd June, 1986.

3. The order of termination of services of the workman is a short one and its relevant portion may be extracted here. It reads as follows :—

"No. AAB/Admin-21/155/4885-91 June 2, 1986.

## ORDER

Whereas Shri Prem Singh Bihari Chavaria, Sweeper has been absenting from duty with effect from 11-3-1986 without any intimation of his whereabouts and prior sanction of leave.

And whereas Shri Prem Singh Bihari Chavaria has failed to report for duty latest by 28-5-1986 despite the opportunity given to him vide Memorandum No. AAB/Admin-21/155/10626-28 dt. 16-5-1986.

Therefore it is deemed that he has no interest in the services of IAAI and has voluntarily abandoned the post. Accordingly, his services stand terminated with effect from 11-3-1986."

P. R. P. RAO, General Manager

4. The case of the workman is that it was untrue that he had voluntarily abandoned his post. Of course, he was absent from duty with effect from 11-3-1986. But this was because of family difficulties and illness. The workman had received an injury on his leg and was unable to move out from his house. The Doctor had advised him to stay indoors. It was due to this that he could not attend to his duties and from 11-3-1986.

5. It was further pleaded that the mother of the workman had sent message to the concerned authority about the inability of the workman to attend to his duties. But, it appears, that the said message was not received by the concerned authority. However, the workman reported for duty on 29-5-1986, i.e. as soon as he had recovered from his illness. However, he was not allowed to resume duty and he was told he would receive a communication and then he should resume his duty. However, the workman received the aforesaid termination order and was not allowed to resume his duties. He filed an appeal before the competent authority but to no avail. It was pleaded that the matter was taken up in conciliation but the conciliation having failed, the appropriate government referred the dispute as above.

6. It was pleaded that prior to terminating his services the General Manager did not follow the principle of Audi, Alterem Partim. The General Manager did not mention in the order of termination as to under what provision in the services of the workman had been terminated. It was submitted that the termination of the services was ordered with retrospective effect and it was illegal. It was further pleaded that the provisions of section 25-F of the Industrial Dispute Act 1947 were not followed.

7. It was pleaded that during conciliation proceedings the Management came out with the case that the service of the workman had been terminated under the provision of International Airport Authority of India (General condition of service) Regulation 1980. It was pleaded that these regulations were not framed with the prior approval of the Central Government, nor were they published in the Official Gazette as such the regulations were not operative and termination of the services of the workman in exercise of powers conferred by the said regulation was bad.

8. It was further pleaded that Regulation 31 of the said regulation was violative and Articles 14 and 16 of the Constitution of India and was therefore illegal in as much as unbridled powers were given to the Management to terminate the services of the workman and the power was liable to be exercised arbitrarily. It was also pleaded that regulation 31(2)(xi) of the regulation of 1980 violated principle of Audi Alterem Partem.

It was further pleaded that the termination of the workman's service was in violation of clarification issued by the Headquarters of the management bearing No. Pers/75/2679 dt. 16/22 October, 1980. This clarification was binding upon Officers of the Management.

9. It was also pleaded that the management had brought into force certain new regulations known as International Airport Authority of India Employees (Control, Discipline and Appeal) regulations 1987 w.e.f. January 7, 1987 after approval of the Central Government. These Regulations had been published in the Official Gazette. These regulations were in conflict with the 1980 regulations and hence 1980 Regulations were not in force at all. The termination of the services under the said regulation of 1980 was bad.

10. It was pleaded that in absence of valid Regulations Industrial standing orders would be applicable and a person guilty of major misconduct could be dismissed/discharged or the services could be terminated only by way of process of domestic enquiry. In this case no domestic enquiry was held. It was further pleaded that the order of the General Manager terminating services of the workman was vindictive. Upon such pleas the workman prayed for the directions to reinstate the workman in service with continuity of service and full back wages from 11-3-1986.

11. The Management has contested the claim of the workman and has traversed the various pleas taken on behalf of the workman. It was pleaded that the attendance record of the workman was not at all satisfactory. He had remained absent without permission from 11-3-1986 onward. He was, therefore, issued a memo No. AAB/Admn/21/155/9985 dated 7-5-1986. He had remained absent without permission which entailed disciplinary action against him. He was advised to report on duty on or before 15-5-1986. The said memo was sent at his local as well as native place addresses by registered post. Both the envelopes were returned by the postal authorities with the remarks "Not Known" and "The addressee resides in Bombay and hence returned" respectively. The Management again issued a memo No. AAB/Admn/21/115/10626 dated 16-5-1986 inviting the attention of the workman to the earlier memo dated 7-5-1986 advising the workman to report on duty on or before 28-5-1986 and submit an explanation for his unauthorised absence failing which the management would be constrained to terminate his service without any reference to him. The envelope containing the said memo was sent at his Bombay as well as native place address. The envelope sent at Bombay address was returned by the postal authorities with the remark "Not known". However, the envelope containing the said memo was received for him, which acknowledgement card was returned by the postal authorities. The case of the management is that during the period of absence the workman did not write any letter to the management and his whereabouts were not known. Hence, the

management was of the view that the workman was not interested in serving with the authority and had voluntarily abandoned the post. The authority, therefore, effected the termination of service with effect from 11-3-1986 by memo dated 2-6-1986. It was submitted that the action was taken against the workman on the basis of a provision of Regulation 31(2)(vi) of the I.A.A.I. (General condition of service) Regulation 1980. It was averred that the action taken was fair, proper and legal. It was denied that the action of the management was not bonafide. It was submitted that the question of holding an enquiry did not arise in the circumstances of the case because of the aforesaid provision of the Regulation which provides that an employee who remains absent without any intimation/prior permission for a period of 2 months shall be deemed to have abandoned job and his service will be terminated without any notice. The action of the management was in confirmity decided the said regulation.

12. It was denied that the workman's mother had sent any message to the concerned authority about the inability of the workman to join his duties as alleged. It was denied that the workman reported for duty on 29-5-1986 as alleged. The question of not allowing him to resume duty did not arise as he did not return for work on 29-5-1986 at all. It was denied that the management had told the workman that he would receive a letter and there after he should resume his duty.

13. The factum that the workman had filed an appeal against the termination of the service was admitted and it was pleaded that the appeal had been forwarded to the Headquarter by the Management. The appeal was not entertainable in the circumstances of the case since the services of the workman were not terminated by initiating disciplinary proceedings against him. Hence the appeal was not entertained by the appellate authority.

14. The Management pleaded that it was a case of voluntary abandonment of service and hence there was no retrenchment and hence there was no question of complying with the provision of 25-F of the Industrial Dispute Act.

15. As regards the Regulation, it was admitted that though the same had not been approved by the Central Government but the same had been approved by the authority and the same were being uniformly applied to all the workman since 1978. Publications of the Regulations in the Official Gazette was not a mandatory provision and the Regulations were valid and legal. It was submitted that the attack to the validity of the regulation being violative of Articles 14 and 16 of the Constitution could not be taken before this tribunal. It was submitted that the provisions of the Regulation were not arbitrary, uncontrolled or unguided. No rejoinder was filed by the workman to the written statement of the management.

16. On the pleading of the parties following draft issues were submitted on behalf of the Management.

- (i) Whether the workman proves that the termination of his services was arbitrary, vindictive, unjustified, wrongful, invalid and illegal ?
- (ii) Whether the management proves that the action of terminating the services of the workman was in accordance with the provision of the I.A.A.I. (General Conditions of Service) Regulations ?
- (iii) Whether the workman himself had abandoned his services ?
- (iv) Whether the action of the management of the International Airport Authority of India, Bombay in terminating the services of the workman by the Order of termination dated 2nd June, 1986 is justified and legal ?
- (v) Whether the workman is entitled to any relief ?
- (vi) If yes, what relief ?
- (vii) What Award ?

17. The draft issues were approved by my worthy predecessor on 18-11-1993. On that date the workman prayed for time for evidence. The parties were directed to file their affidavits before the next date. It appears that workman did not file any affidavit at all. The Management eventually filed affidavit of one Mr. Avinash Kumar Taneja who was cross examined on the said affidavit. Affidavit of one Mr. Dewakar Goel was filed 15-1-1997 but he was not cross examined. Both the parties have lead some documentary evidence, to which reference shall be made at appropriate place.

18. The matter was argued by learned counsel for the parties on 17-04-1997 and the award was reserved.

19. There has been a delay in the disposal of the matter because the post of Presiding Officer of the tribunal was lying vacant since 19-2-1991 and a new Presiding Officer could take over some time about April 1993. Thus, for almost 2 years no material progress could be made in the case. Then this tribunal did not have Stenographer for quite some time i.e. almost for one year or so.

20. Now, so far as the facts of the case are concerned, they are not in dispute. Admittedly the workman remained absent from duty from 11-3-1986 without prior sanction of leave. He did not apply for grant of any leave for absence from duty. Though the workman claims to have reported for duty on 29-5-1986 and has pleaded that he was not allowed to resume duty, there is no evidence in support of this contention. He has not dared to file even his own affidavit in support of this plea ? He had further pleaded that on 29-5-1986 he was told that he would receive a letter and thereafter he should

resume his duty. The averment is blissfully vague. It does not mention as to who had told the workman that he would receive a letter and thereafter he should resume the duty. Even this plea is not supported by any affidavit of the workman. Admittedly, the service of the workman had been terminated on 2-6-1986 for having remained absent from duty from 11-3-1986 without prior sanction or leave. It is in this background that I have to examine the legality or otherwise of the order dated 2nd June, 1986 by which the service of the workman had been terminated.

21. I have already reproduced the order in extenso earlier. The order recites the fact of absence from duty of the workman without any intimation of his whereabouts and without prior sanction of leave from 11-3-1986. The order also mentions that the workman failed to report on duty even by 28-5-1986 disputes an opportunity given to him to join duty by memo AAU/ADMIN/21/155/10626/28 at 16-5-1986. The order further recites that it is deemed that the workman has no interest in the service of IAAI and has voluntarily abandoned the post. It was on the aforesaid premises that the services of the workman were terminated from 11-3-1986. It is an admitted position that the management had sent notices to the workman to report on duty at the addresses available with the management and one of the notices was admittedly received by the mother of the workman. The workman claims that his mother has sent message to the concerned authority about his inability to attend the duty because he had sustained an injury on his leg and was unable to move from his house. This plea has not been substantiated either by the affidavit of the workman or by the affidavit of the workman's mother or by any medical certificate. Hence this averment is not proved.

It is surprising that even though the workman claims that he had reported for duty on 29-5-1986 and was not allowed to resume the same and was told that he would receive a letter and thereafter he should resume his duty yet, he kept quiet mum for a very long period in moving the authorities.

22. The workman claims to have several representations and appeals but the copies of none of such appeals have been placed on record. The earliest mention of a representation regarding reinstatement is found in Ex-B dt. 2nd September, 1987 which reads as follows :

"Reference letter dated nil received from Shri Chavaria, Ex-Sweeper, regarding reinstatement in the IAAI services.

In this connection, Shri. Chavaria is hereby advised to apply to Member (F&A), IAAI Hqrs., who is appellate authority to consider such cases".

It appears that thereafter on 7-9-1987 the workman moved a representation Exhibit-C which was a plea for reinstatement on humanitarian ground. All these facts go to show that the workman had remained absent from duties from 11-3-1986 till he moved the

first representation some time in September 1987. As already stated the workman has not justified his absence from duty at all and the plea that he had sustained an injury in leg and was prevented from reported back on duty due to justifiable reason has not been established.

23. The present claim was filed on 5-4-1991 i.e. after the inordinate delay which has remained unexplained on the record. This would be the true backdrop in which the legal contentions raised before me have to be examined. I may readily state that law of limitation is not applicable to these proceedings, yet the proceedings should not suffer from laches and inordinate unexplained delay, which is the case here.

24. This Management has placed on record the xerox copy of the International Airport Authority of India (General Conditions of Service) Regulation, 1980, Rule 31 of the Regulation reads as follows :

**"31. Treatment of Unauthorised Absence :**

1. An employee who is absence from duty without any authority, shall not be entitled to the pay and allowances during the period of such absence. The unauthorised absence of this kind, apart from resulting in loss of pay and allowances for the period of such absence would also constitute a break in service, entailing forfeiture of past service, unless the break itself is condoned and treated as dies non by the competent authority, the service rendered prior to unauthorised absence will be counted for all purposes, but the period of break itself will not count for any purpose.
2. The consequence of unauthorised absence from duty which is not condoned in any manner would be as follows :

A bare reading of sub-clause six of this rule goes to show that if any employee remains absent without any intimation/prior permission for a period of two months he will be deemed to have abandoned his job and his services will be terminated without any notice.

In the present case, the competent authority has terminated service of the workman on the ground that he had abandoned his job because of the deeming provision of the said sub-clause (vi) of clause (2) of Rule 31. It is not proved that the workman had sent any intimation or sought prior permission for his absence at all.

25. Learned counsel for the workman vehemently urged that the service Regulations in question had not been published in Gazette and had not been promulgated after obtaining prior approval of the Govt. of India and hence were void and inoperative. Reliance has been placed in this connection upon 1993 2 CLR 521 International Airport Authority of India v/s. V. M. Sukhlingam and others. That was a case where the service of the workman had been

terminated without notice under Regulation 31(2)(vi) of the aforesaid Regulation. It was held that since no opportunity of hearing was given the impugned termination was not in confirmity with the provision of the said Regulation 31 and hence it was unsustainable.

26. Learned Judges deciding the aforesaid case were of the view that the said Regulation had no effect in the eyes of law as they were not published in the Official Gazette and had not received prior approval of the Central Government. After having expressed this on the legality or otherwise of the Regulations, their Lordship went on to say that apart from the consideration aforementioned, even assuming that the Regulation in question could be relied upon for the purpose of justifying the submission that no domestic enquiry was necessary, the language in which the regulation is couched and the consequences which ensue therefore make it abundantly clear that an opportunity had to be given to the workman to show cause before taking the extreme step of terminating his employment.

27. So far as the opinion of the learned Judge on the question of legality or otherwise of the Regulations is concerned, this view did not find favour with another division bench of same High Court in unreported judgment rendered in Ordinary Original Civil Jurisdiction Writ petition No. 471 of 1993 International Airport Authority of India Engineers Association v/s. International Airport Authority of India decided on April 29, 1993 by a Division Bench. In the Judgment rendered on April 29, 1993.

"It was laid down by various judgements of Apex Court that for administrative reasons, pending approval of the Central Government, the Authority is entitled to frame Administrative Instructions".

28. On behalf of the workman reliance was also placed on I.T.C. Bhadrachalam Paper Boards & Another v/s. Mandal Revenue Officer, A. P. & Others, JT 1996(8) S.C. 67. That was a case under a taking statute where publication in the Official Gazette was mandatory. It was held that an order of exemption from tax which required mandatory publication could not be acted upon. In my opinion, this judgment also does not have any direct bearing on the facts of this case. I would like to mention here that in service jurisprudence absence or non-publication of service Regulation of their non-approval would not make them altogether void and at worst they have to be treated as Executive instructions, for the simple reason that there can be no vaccum within an organisation. If a vaccum is allowed to be created, due to non-approval or non-publication of Regulations then no disciplinary proceedings would be permissible and this would create a chaotic situation in the administration. Every employer is entitled to exercise supervisory and disciplinary control over its employees and if the service Regulations have not been approved or published in a manner prescribed then they shall have to be treated as Executive instructions binding upon the subordinate authorities and their employees. Of course, in such circumstances the Service Regulations would not have Statutory

force but would have binding effect as Executive instructions which an employer is entitled to issue from time to time for regulating conduct of employees and disciplinary proceedings to be taken against its workmen. I am fortified in this view by numerous judgments of Apex Court and reference may be made in this regard to T. Cajee v/s. U. J. Siem & Anr, AIR 1961 S.C. 276. The Apex Court observed at page 281 as follows :

"But it does not follow from this that the appointment or removal of chief is a legislative act or that no appointment or removal can be made without their being first a law to that effect."

The Apex Court proceeded to state the law as follows :

"It is true that where Executive power impinges upon the rights of citizens it will have to be backed by an appropriate law; but where Executive power is concerned only with the Personnel of the Administration it is not necessary even though it may be desirable—that there must be laws, rules or Regulations governing the appointment of those who would carry on the Administration under the control of the District Council".

It further added :

"But from this it does not follow that till the Regulations were made or the laws were passed, there could be no appointment or dismissal of the personnel of the Administration. In our opinion the authorities concerned would have at all relevant time have the power to appoint or remove Administrative Personnel under the General power of Administration".

A similar view was expressed in V.T. Kanzode v/s. Reserve Bank of India AIR 1982 Supreme Court page 917 placing reliance upon T. Cajee's case (Supra) Hence, I am clear in my opinion that though aforesaid service regulations could not be placed on the pedestal of Statutory Regulations, yet were still applicable as Executive instructions to govern the action to be taken by the Management with regard to its absentee workman. In the present case the management has succeeded in proving that the action of the terminating service of the workman was in accordance with the provision of IAAI (General condition of service) regulations and the said order cannot be said to be arbitrary, vindictive, unjustified, wrongful, invalid or illegal, particularly when the workman has not filed his affidavit or that of his mother or a medical certificate to show that he had a really of justifiable cause which prevented from attending his duties.

29. Learned counsel for the workman vehemently contended that mere absence from duty could not be treated as voluntary abandonment. He has placed reliance on this action upon Medekar v/s Zenith Safe Mfg. Co. 1996 I CLE 172 (177) and Sitaram v/s. Labour Court, Patiala 1996 I CLR 1142. I

have gone through this rulings carefully in G. K. Medekars case, the High Court has taken a view that in case of Voluntary abandonment of service it is a matter of intention and is a matter of inference being drawn on a given set of facts. The Employees unilaterally cannot say that the workman is not interested in employment and it is for this reason a domestic enquiry is required to be held. In Sitaram case a similar view was taken by the Punjab and Haryana High Court. In both these case there were no executive instructions available providing for deemed abandonment of services on the ground of absence for a particular period. It is true, that primary onus lies on the management to prove voluntary abandonment of service but this onus shifts to the workman when his continued absence from duty has been shown.

30. Reliance was also placed on 1979 LIC of 90 G.T. Lad and others V/s Chemicals & Fibre India Ltd. The case is distinguishable on fact because in this case certain workers had gone on strike during pendency of Industrial Dispute and the management by a letter informed the workman that their failure to rejoin by a particular date would be treated as abandonment of service. The workman replied that they did not intend to abandon service and alleged that the letter had been received after the date prescribed therein for joining duty. In the circumstances of the case the Apex Court held that there was nothing in the circumstances of the case to infer intention on the part of the workman to abandon services.

Then reference was made to D. K. Yadav case 1993 II C.R. 116. It was a case where the appellant had been sanctioned leave but had over stayed the leave. He had put forth the case that he had reported on duty on December 3, 1980 and on subsequent days but he was prevented from doing so and was prevented from signing attendance register. The tribunal did not record any conclusive findings on this behalf. In these circumstances the Apex Court was of the view that the workman was not permitted to put forth his stand properly. The present case is very much distinguishable because the workman has failed to lead any evidence whatsoever in support of his aforesaid similar contentions, inspite of opportunity given by this tribunal.

31. Shri. Dongre placed reliance on L.L.N. 741 Kailas Prasad Sharma v/s Labour Court and another. In that case the workman had remained absent w.e.f. 29-5-1985. He was given notice to rejoin the duties. The workman did not rejoin duty in spite of some notices sent to him which were received back undelivered. On evidence adduced before it, the Labour Court found that the workman had remained absent and had been sent letters to resume duty. He did not do so and his name was removed from the muster roll. The Labour Court also came to a conclusion that the Management required the workman to collect his dues and that the sufficient compliance with provision of 25-F of the said Act. The Labour Court upheld the order of termination but the High Court in exercise of its writ jurisdiction was of the view that there was no compliance with the provision

of 25-F of the act and hence awarded a sum of Rs. 20,000 as a fair amount of compensation in the circumstances of the case. This case is also distinguishable on facts.

32. Learned counsel for the workman contended that in this case termination order had been passed with retrospective effect and hence it was invalid. Reliance was placed upon A.R. Dhage's case 1989 II CLR 331 and Chowke Panchkroshi Shikshan Prasarak Mandal v/s D.A. Narvekar & Ors. 1992 CLR 672 H.C. Bombay. In Dhage's case the Division Bench of the Bombay High Court has held that service of an employee cannot be terminated with retrospective effect. The same view was held in 1992-II CLR 672—Chowke Panchkroshi Shikshan Prasarak Mandal Case. The Apex Court in AIR 1966 Supreme Court 951 R. Jeeva Ratnam Case, has held that any order of dismissal with retrospective effect is in substance an order of dismissal as from the date of the order with a direction that the order should operate retrospectively as from anterior date. The two parts of the order are clearly severable; assuming the second part of the order mentioning that dismissal would operate retrospective is invalid. There is no reason, why first part of the order should not be given the fullest effect. The Court cannot pass a new order of dismissal but surely it can give effect to the valid part of the order. It does not appear that attention of Hon'ble High Court deciding Asaram Dhage's case was invited to the aforesaid dictum of Apex Court. The same appears to be the position in 1992-II CLR 672 Chowke Panchkroshi Shikshan Prasarak Mandal case. In my opinion the dictum of the apex Court laying down that this tribunal can ignore the invalid part of the dismissal order but can give effect to the valid part of the order, is binding on this tribunal.

33. At this state, it would be appropriate to notice that the workman was appointed in exercise of the powers conferred on the appointing authority by the Regulations already adverted to Sub-clause (vi) of clause 2 of Regulation 31 constituted a condition of the appointment of the workman. Since the services of the workman were terminated in accordance with the stipulation governing the appointment, the termination fell within the exception clause of Sec. 2(00) covered by second part of sub-clause (bb) of the said clause, which excepts termination of a contract under a stipulation contained thereon. The provision of sub-clause (vi) of clause (2) of Regulation 31 has to be read as a condition or stipulation in the contract of appointment and this distinguishes the present case from other cases cited before me. Hence, compliance of provisions of Sec. 25 F of I.D. Act was not mandatory in the present case.

34. I have already stated the facts of the present case. The workman absented himself without prior sanction of leave from duty on 11-3-1986. He did not leave his address or whereabouts with the Management. The Management served notices on him at already available address to report for duty but they were returned by the postal authorities. However, one of them was accepted on behalf of the

workman. The workman came out with the case that his mother had sent message regarding the illness to the Management but as already stated, affidavit of the mother to state this fact on oath was not filed; nor any medical certificate was filed. Even though fact had been specifically contested by the Management. He further came out with the case that he was told that he would receive a letter and there after he should resume his duty. This was a bald averment quite vague in nature and was disputed on behalf of the management. He did not care to support the averment by his own affidavit. The earliest representation which the workman appears to have made, finds mention in Ex-B dated September 2nd, 1987. This shows that the workman did not care even to make a representation against the termination of service; even though more than a period of one year and 3 months had passed. In the above circumstances of the case, the Management was right in assuming it as a case of abandonment of service under sub-clause (vi) of clause 2 of Regulation 31 and I find that the workman has failed to show that he did not have the intention of voluntary abandoning the post.

35. Hence I find that the order of termination of the workman is valid only from the date on which it was passed namely—2nd June, 1986. In view of this, the workman would be entitled to get his wages from 11-3-1986 to the date of termination namely June 2nd, 1986. However, he is not entitled to any reinstatement or back wages. Award made accordingly.

R. S. VERMA, Presiding Officer

नई दिल्ली, 3 जून, 1997

का.आ. 1627.—श्रीदोगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एयर पोर्ट अर्थात् एयरपोर्ट इंडिया लखनऊ के प्रबंधतात्र के संबद्ध नियोजकों श्रीर उनके कर्मकारों के बीच अनुबन्ध में निर्विघट श्रीदोगिक विवाद में केन्द्रीय सरकार श्रीदोगिक अधिकरण कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-6-97 को प्राप्त हुआ था।

[सं. एल०-11012/1/95-ग्राइ.आर. (विविध)]

बी.एम० डेविट, डेस्क अधिकारी

New Delhi, the 3rd June, 1997

S.O. 1627.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Kanpur, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Airport Authority of India, Lucknow and their workman, which was received by the Central Government on the 3-6-1997.

[No. L-11012/1/95-IR(Misc)]

B. M. DAVID, Desk Officer

## ANNEXURE

BEFORE SRI B. K. SRIVASTAVA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT PANDU NAGAR, KANPUR.

INDUSTRIAL DISPUTE NO. 155 OF 1995

In the matter of dispute between :

Director, Airport Authority of India, Lucknow Airport, Lucknow.

And

Shahabuddin, Village Chilawa, Post Sarojini Nagar, Lucknow.

APPEARANCE :

Rajesh Nath for the workman & V. K. Gupta for the Management.

## AWARD

1. Central Government, Ministry of Labour, vide its notification number L-11012/01/95 I.R. Misc. dated 13-12-1995 has referred the following dispute for adjudication to this Tribunal—

Whether the action of the management of Airport Authority of India, Lucknow is legal and justified to terminate the services of Sri Shahabuddin workman w.e.f. 15-9-1987 in violation of section 25F of I.D. Act, 1947 ? If not to what relief the workman is entitled to ?

2. The case of the concerned workman is that he was engaged from time to time from 2-5-1980 upto 15-9-1980 in broken period by the opposite party Airport Authority of India, Lucknow. Last such appointment was as daily rated Mazdoor from 24-10-1986 he worked upto 15-9-1987 when his services were terminated in breach of section 25F of I.D. Act. Payment of retrenchment compensation and notice pay has also not been paid to the concerned workman.

3. The opposite party has filed reply in which it has been alleged that last appointment of the concerned workman was from 29-5-1987 to 15-9-1987 and that it was for fixed period and this appointment was not made on any clear post.

4. In the rejoinder nothing new has been alleged.

5. Thus, the only point which needs consideration is as to whether the concerned workmen had completed 240 days before the date of his retrenchment i.e. 15-9-1987. In this regard there is evidence of Shahabuddin W.W.I who has stated that he had worked for more than 240 days during this period. Management witness K. B. Srivastava Assistant Technical Officer had stated that the concerned workman did not work continuously. The concerned workmen had filed 11 papers alongwith list dated 26-10-1996. Paper no. 11 of this list is a certificate given by Dinesh

Prakash an officer of the opposite party in which he has certified that the concerned workman had worked from 31-10-1986 to 15-9-1987 on daily wages. The management has not challenged the genuineness of this document. Hence, relying upon this document alone. I accept the version of the concerned workman and hold that he had completed more than 240 days in a year preceding the date of termination. Hence, section 25F of I.D. Act was applicable. Admittedly no retrenchment compensation and notice pay has been paid to the concerned workman, hence his termination is bad in law. Stated I am of the opinion that the concerned workman will not be entitled for reinstatement in service because of the belated reference and also because he was daily rated worker. Hence, my award is that termination of concerned workman is badlaw. But, in lieu of reinstatement he would be entitled to get Rs. 10,000 as compensation.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 29 मई, 1997

का.आ. 1628. श्रौद्धोगिक विवाद अधिनयम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक आफ बॉर्ड के प्रबंधतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट श्रौद्धोगिक विवाद में केन्द्रीय सरकार श्रौद्धोगिक अधिकरण, I, मुम्बई के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 29-05-97 को प्राप्त हुआ था।

[संख्या एल-12012/229/93 आईआर (बी II)]  
सनातन, डस्ट अधिकारी

New Delhi, the 29th May, 1997.

S.O. 1628.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, I, Mumbai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of Board, and their workmen, which was received by the Central Government on 29-5-97.

[No. L-12012/229/93-IR (B-II)]  
SANATAN, Desk Officer.

## ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, MUMBAI.

PRESENT :

Shri Justice R. S. Verma Presiding Officer.

REFERENCE NO. CGIT-36 OF 1994.

PARTIES :

Employers in relation to the management of Bank of Baroda.

AND

Their Workmen.

APPEARANCES :

For the Management : Shri D'Souza.

For the Workmen : Shri M. G. Satwalkar.

STATE : Maharashtra.

Mumbai, dated the 15th day of May, 1997.

**AWARD**

1. The appropriate Government has referred the following dispute for adjudication to this tribunal :—

"Whether the action of the management of Bank of Baroda Pune, in denying the post of Head Cashier category 'E' to Shri A. S. Adate, Head Cashier category 'C' w.e.f. 16-2-1992, is justified ? If not, what relief is the said workman entitled to ?"

2. The facts giving rise the controversy involved in this dispute lie in a narrow compass. The Bank of Baroda has different categories of Head Cashiers. The lower most category, is category 'A'—Category 'C' is a higher category. Category 'E' is the highest among them. Each category carries a different special allowance. The responsibilities and special allowances for the post of Head Cashier category 'E' are higher than that of Head Cashier category 'C' and likewise responsibilities and special allowance of Head Cashier category 'C' are higher than that of Head Cashier Category 'A'.

3. Para 7.6(a) of the settlement dated 3rd October, 1978 (Ex. M-3) admittedly deals with the procedure of appointment to post of Head Cashier category 'C'. The relevant para is extracted below in extenso.

"7.6(a) For the purpose of this clause the branches in the State or Administrative region whichever is smaller will be divided into following categories :

**Category (A).:**

Cities/Towns/Places which have more than one branch or where a second branch is to be opened.

**Category (B) :**

Other Cities/Towns/Palaces which have only one branch.

Where the Bank has a branch or opens its first branch at a place in category (B) above ; has to appoint Head Cashier Category 'C' in such a place. The Bank shall invite applications from amongst eligible cash clerks or clerks whose combined designation includes the designation of 'Cash Clerk' and who have given security deposit (excluding Head Cashiers Category 'C') in branches in Category (B) in the State or Administrative Region of the Bank whichever is smaller. Head Cashier Category 'C' would be selected from amongst the senior most eligible applicant who is suitable. If there is no suitable eligible applicant at all, the Bank shall invite applications from eligible cash clerks as defined, from branches in category (A). In the event of there being no suitable eligible applicant even from the branches in Category (A) the Bank shall select an eligible suitable cash clerk from Category (B) branch for being posted in such a branch as Head Cashier Category 'C' PROVIDED HOWEVER such a Head Cashier Category 'C' would be eligible to apply for transfer as Head Cashier Category 'C' at a later date to a branch of his choice in Category (B) without having to forego his special allowance as required in such cases at present".

4. Shri Ashok A. Adate admittedly was initially a Counter clerk, was posted as Head Cashier category 'A' vide order Ex W-1 dated 24-11-1988 at P.C.M.C. Extension Counter branch and he continued to serve in this capacity for some time.

5. It is to be noted that, there is a branch of the Bank known as Pimpri Chinchwad (Pune) Branch. This Branch had a post of Head Cashier category 'C' and till August, 1988, one Mr. M. G. Satvalekar was working as regular and permanent Head Cashier, category 'C' in the said branch. He was temporarily appointed on the post of ATM Operator and as such the post of Head Cashier category 'C' fell vacant temporarily. Thereupon, Mr. A. T. Aswani who was next senior most Cashier was appointed to the said post. On 20-6-1989, Bank assigned duties of ATM Operator to Mr. A. T. Aswani and the post of Head Cashier category 'C' at the said branch again fell vacant.

6. On the date, Mr. A. T. Aswani took over as ALPM Operator, Mr. A. A. Adate was admittedly working as Head Cashier Category 'A' at the Branch. As stated earlier, he could have been appointed to the higher post of Head Cashier 'C', carrying a higher allowance only in accordance with para 7.6(a) of the settlement dated 3rd October, 1978 and not otherwise.

7. However, by some mistake, as claimed by the Bank, without following the procedure detailed in the said para, an offer came to be made to Shri Adate vide Ex. W-2 dated 18-9-1990 for permanent appointment to the post of Head Cashier category 'C', which he accepted and consequently Shri Adate was posted as Head Cashier category 'C' at the said branch.

8. The case of the All India Bank of Baroda Employees Union (A.I.B.B.E.U.) espousing the cause of Mr. Adate is that by acceptance of aforesaid offer, a valid contract appointment came into force and Mr. Adate became Permanent Head Cashier category 'C' and Mr. Adate became eligible to the special allowance admissible on the said post. The case of the A.I.B.B.E.U. is that this position attained facility from 1-7-1989 in as much the offer was retrospective in nature.

9. The case A.I.B.B.E.U. is that the Branch was upgraded thereafter and the post of Head Cashier category 'C' was elevated to that of Head Cashier category 'E'. This elevated post was offered to Mr. Satvalekar but he did not respond. The Bank treated this as refusal of Mr. Satvalekar to join the said upgraded post and issued a circular dated 18-7-1992 inviting applications to fill up the said upgraded post. Mr. Adate stated his claim to this post by writing letter dated 31-3-1991, saying that he being a permanent Head Cashier category 'C' should be appointed to the post as per para 4.2(2) of Settlement dated 16-2-1991. Some correspondence ensued between Mr. Adate and the Bank and the Bank eventually took the stand that due to oversight permanent post of Head Cashier category 'C' had been offered to Mr. Adate when it should have been an offer for a temporary post. Meanwhile, on 22-2-1992 the Bank appointed Mrs. A. R. Taholi to the said post of Head Cashier category 'E' amongst candidates, who had applied for the said post in pursuance of circular dated 18-7-1991. Mrs. Taholi took over the charge of the post of Head Cashier category 'E' and the allowance which was being paid to Mr. Adate was withdrawn.

10. It appears that aggrieved by this action, the workman initially approached Bank of Baroda Employees Federation (BBEF) for redressal of his grievance viz. that he ought to have been given the status and special allowance of Head Cashier category 'E'. However, upon BBEF not espousing the cause, he approached AIRBPEU for espousal of his cause. AIRBPEU took up the matter with the concerned authorities and eventually raised a dispute which was taken up in conciliation being failed. The dispute was referred to this tribunal as state above.

11. Initially, A. R. Taholi was not a party to these proceedings but, by Part I Award dated 19th November, 1996, I directed her to be joined as a party under section 18 of the Industrial Disputes Act. Mrs. A. R. Taholi has put in appearance through Maharashtra Region Bank of Baroda Employees Union affiliated to BBEF and has filed her say and has opposed the claim of the workman Shri Adate and has supported the stand of the Bank and has justified her appointment to the post of Head Cashier category 'E'.

12. The first and foremost question is whether the appointment of Mr. Adate to post of Head Cashier category 'C' was made in a permanent capacity or reference in the letter of offer was due to a mistake and hence appointment of Mr. Adate to post of Head Cashier category 'C' was only a misnomer. Mr. Adate in his cross examination stated :—

"I have seen Ex. M-3. Its clause 7.6(a) governs the appointment of Head Cashier category 'C'. I do not know if prior to my appointment in category 'C' the Bank had invited applications for eligible ... clerks."

It is no bodies case that as provided by the said para, no application had been invited by the Bank and Mr. Adate had been selected from among the applicants entitled to

compete for the post. When, it is so Mr. Adate could not have been offered the post of Permanent Head Cashier category 'C' at all and obviously the offer made to him was due to a mistake, which the management was at all times entitled to rectify. It is not the case of Mr. Adate that he had applied for the post of Head Cashier category 'C' and was duly selected. An appointment, contrary to lawful procedure for appointment to the post of Head Cashier category 'C' could not confer any right on Mr. Adate. It is true that the Bank acted as a sloth Bear in correcting and rectifying the mistake committed by it but there is no estoppel in such matters.

13. In this context statement of M. A. Kholatkar in cross examination dated 12-8-96 is germane. He stated:

"The mistake took place at the level of the Branch Manager and not at the Regional level. The Branch Manager was not empowered to promote workman to Category and Regional Manager alone was empowered to do so". (Emphasis supplied).

This statement of Mr. Kholatkar has not been shown to be wrong or incorrect and has not been refuted in any manner. Hence Ex. W 2, not emanating from a competent authority, could not confer the status of a permanent Head Cashier category 'C' on Mr. Adate, particularly when he was not selected through prescribed procedure for the post. I, therefore, agree with the management that Ex. W 2 was issued under a mistake and has no sanctity in the eyes of law.

14. In this regard, it was repeatedly urged by Mr. Satvalekar that Bank did not act promptly in correcting the alleged mistake and hence was not entitled to correct it belatedly. I do not agree with the propositor.

15. I may state that since the mistake had been committed at a lower level, the competent authority could always rectify as and when the mistake was brought to its notice.

16. I am of the view that it is a fit case, where the management should take disciplinary action against the Officer/Officials, who very negligently and carelessly issued offer Ex. W2 dated 18-9-90, creating a situation whereby the workman Shri Adate has been emboldened to take a stand that he got permanently appointed to the post of Head Cashier category 'C', even though the concerned Officer issuing Ex. W2 dated 18-9-90 was not competent to issue offer for a permanent posting without there being due selection of Adate for such a post.

17. Moreover, reverting to the point of estoppel and acquiescence against the Bank, suffice it to say that inferior minions in the Bank, cannot bind the bank, by making erroneous and improper offers, and Bank would be wholly justified in reviewing such invalid and illegal orders, which do not confer any right on the employee, who has been benefitted by an improper action of a Manager, not competent to select and appoint Adate to the post of permanent Head Cashier category 'C'. I repeat that inspite of Ex. W2 dated 18-9-90 and acceptance thereof by Adate, no valid contract of appointment as permanent Head Cashier category 'C' came into being, because a person not competent to make such an appointment, could not bind the Bank to accept a position, wholly indefensible in law.

18. On behalf of Adate, it was urged that mistake of law is no excuse. It misses the basic fact that mistake of a person not competent to contract, could not bind the Bank at all.

19. Another contention that was urged that retrospectivity had been given to order of appointment and if the appointment was not permanent, retrospectivity could not have been given. This argument misses the basic fact an order invalid in itself, even if made to be retrospective, would not be rendered valid and correct by grant of such retrospectivity.

20. The next contention urged vehemently is that the action of the Bank amounted to change of service condition of Adate and this could not have been done without a

notice under section 5A of the Industrial Dispute Act. Again, the argument is a fallacious one. It proceeds on the assumption that Adate had become a permanent Head Cashier category 'C' because of Ex. W2. I have already pointed out that this could not have been done at all. Mr. Adate was merely a usurper of office, to which he could not have been appointed. In my opinion, no usurper can contend that he should be allowed to continue as a usurper in a particular post, to which he is not rightfully entitled to.

21. On behalf of Adate, reliance was placed upon judgment of the apex court dated 16-8-67 rendered in Civil Appeal No. 480 2 1966 Indian Overseas Bank. In that case, a workman were granted 'Key Allowance' which had become part of his service condition, but was later on withdrawn. It was held that once an allowance becomes part of service condition, it could not have withdrawn, without resorting to the provisions of Sec. 9A of the Industrial Disputes Act. Similar, was the situation in 1975 Lab. I.C. 1429 Management of I.O.C. Ltd, where Management voluntarily granted certain compensatory allowance and it became a part of service condition. It was held that unilateral withdrawal was not permissible. Both these judgements do not assist Adate because in both the cases, allowances had been granted by competent authority. Such is not the position in the present case because of appointment of Adate as Head Cashier category 'C' and consequent grant of allowance, were invalid action of a minor minion of the Bank and did not confer any right on Adate and hence the allowance never became a part of the service condition of Adate.

22. It was contended on behalf of Adate that the action of the Bank amounted to an unfair labour practice. Reliance was placed on Judgment of Bombay High Court dated 17-8-87 rendered in appeal No. 360 of 1985 Kamani Tubes Ltd. I fail to see how the action of the Bank could be characterised as unfair, when it merely set the position right and pointed out that Adate was not entitled to claim to be a permanent Head Cashier category 'C' and was not entitled to any allowance and was consequently not entitled to be promoted to post of Head Cashier category E. The apex Court has held in 1996 II L.J. 227 Yogendra Narain Chowdhary and others that a correct fitment of workmen on discovery of a mistaken earlier fitment, is not a reversion and is permissible.

28. Viewed from any angle, I find that Mr. Adate was not entitled to be promoted as Head Cashier category E, w.e.f. 16-2-91 and in denying such posting and ancillary allowance, the Bank did not commit any mistake of law or fact and the action of the Bank was eminently justified and proper. The workman Adate is, thus, not entitled to any relief and the claim is rejected.

Award is made accordingly.

R. S. VERMA, Presiding Officer

नई दिल्ली: 4 जून, 1997

का. आ. 1629.—ओडिगिक विवाद अधिनियम, 1947 (1947 का 14), की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक आफ बड़ीदा के प्रबन्धतंत्र के संबद्ध नियोजक और उनके कर्मगार के बीच अनुबन्ध में निर्दिष्ट ओडिगिक विवाद में श्रम न्यायाधिकरण पूर्णे के पंचांत को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-6-97 को प्राप्त हुआ था।

[संख्या एस-12012/204/93 प्राई शार बी-II]  
सनातन, डेस्क अधिकारी

New Delhi, the 4th June, 1996

S.O. 1629.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the LC, Pune as shown in the

Annexure in the Industrial Dispute between the employers in relation to the management of Bank of Baroda and their workmen, which was received by the Central Government on 3-6-97.

[No. L-12012/204/93-IR(B-II)]  
SANATAN, Desk Officer

## ANNEXURE

BEFORE SHRI P. S. SHINDE, PRESIDING OFFICER,  
II LABOUR COURT, PUNE

Ref. IDA No. 52/94

## BETWEEN

Keshtriya Prabandhaka,  
Bank of Baroda, Nabard Building,  
Shivajinagar, Pune-411 005 ..First Party

## AND

Adhayaksha,  
Bank of Baroda Karmachari  
Trade Sangathan Congress,  
C/o Prataprao C. Kambale, Saichhaya,  
Opp. Jai Sangli Naka,  
Parihat Society, Road,  
Ichalkaranji-416 115 ..Second Party

Sub. :—In the matter of debarring Shri R. R. Chavan  
for Special Assistant Allowance for 5 years.

## Appearances :

Shri S. S. Hattiangadi for First Party.

Shri J. D. Paranjape for Maharashtra Region Bank of  
Baroda Employees' Union.

Shri N. A. Kulkarni for Second Party.

## AWARD

1. The Desk Officer, Labour Ministry, New Delhi has made this Reference Sec. 14 Sub-Sec. 10(2k) of the Industrial Disputes Act 1947 for adjudication of an industrial dispute within the meaning of Sec. 2K of the said Act between Keshtriya Prabandhaka, Bank of Baroda (First Party) and Adhayaksha, Bank of Baroda Karamchari Trade Sangathan Congress (Second Party) over the following demand :—

"Whether the action of the management of Bank of Baroda Western Maharashtra Region, in debarring Shri R. R. Chavan for special Assistant Allowance for a period of five years w.e.f. 6-8-91 vide letter No. RM : WM : STF : 3 : 3092 dated 5-9-91 is in order ? If not to what relief the workman is entitled to ?"

2. Second party filed the S/C at Ex. 8 and submitted that it has raised the Reference on behalf of its Member Shri R. R. Chavan who is debarred for Special Assistant Allowance for a period of five years w.e.f. 6-8-91 vide letter dt. 5-8-91. By the settlement of 1991 it was made clear that the said settlement supersedes all previous understandings/agreements/settlements/practices, local, zonal, regional or otherwise in respect of the matters covered under the settlement and the old policy of 1977 was repealed. As per the settlement of 1977 if a person refuses promotion he is debarred for promotion for 5 years. In the year 1991 the first party entered another settlement wherein new eligibility criteria was laid down. Shri R. R. Chavan was called for interview on 19-7-91. He was interviewed and selected for the post of Spl. Assistant and letter was given at Pune on 19-7-91 by selecting him to post of Spl. Assistant and transferring him to Akluj. The second party refused the promotion to Akluj. Shri Chavan received a letter dt. 5-9-91 debarring him for five years w.e.f. 6-8-91. The second party therefore, prays to quash and set aside the said order with other reliefs.

3. The first party filed the W/S at Ex. 14 and contended that the union has raised only issue that certain provisions of a settlement were allegedly not complied with by the first party. The action does not amount to an industrial dispute. Mr. Chavan was called for interview on 19-7-91 to fill the

vacancy of Special Assistant which arose in 1990. He being the senior most and found suitable was assigned the duties of Special Assistant at Akluj Branch. However, he did not accept the said offer. Therefore, his debarment for 5 years from 6-8-91 was conveyed to him vide letter dt. 5-9-91. The promotion which was offered to Shri R. R. Chavan was under the provisions of 1977 settlement and which was a 1990 vacancy and the action of debarment was also under the provision of the said settlement. The terms of settlement have to be accepted in entirety and no party can pick and choose the terms favourable to it. The post of Special Assistant as Ichalkaranji was a vacancy of 1991 and said post was vacant till December 1993. Shri Chavan could not be considered for the said post as he was debarred from getting any promotion. The demand of the second party is therefore, illegal and therefore, the reference is prayed to be rejected with costs.

4. On the basis of the pleadings the issues that arise for my determination are as below :—

Issues	Findings
(1) Does the second party prove that the action of the first party bank of debarring concerned workman Shri R. R. Chavan for five years w.e.f. 6-8-91 is illegal ?	Yes
(2) Does the second party prove that he is entitled for the relief as prayed or otherwise ?	Yes
(3) What order ?	As per the order.

## REASONOS

5. Issue No. 1 :—The workman concerned was issued with letter dt. 5-9-91 and thereby he has been debarred for the post of Special Assistant Allowance for the period of 5 years w.e.f. 6-8-91. Said action of the Management has been disputed by the second party on the ground that in view of the settlement of 1991 between the Bank Management and All India Bank of Baroda Employees' Federation u/s 2(P) of the I.D. Act 1947 read with rule 58(4) of the I. D. Act (Central Rules 1957). On the other hand the first party bank has contended that the post for which the concerned workman has been debarred fall vacant prior to existence of 1991 settlement and since the said post was vacant prior to entering into settlement of 1991 question of extending benefit or covering the concerned workman under said settlement does not survive. I have perused the settlement of 1997, 1984 as well of 1991 which has been produced in this proceedings below Ex. 26. So far as settlements are concerned there is no dispute about the same between any of the parties. It is pertinent to note that All India Bank of Baroda Employees' Federation Maharashtra Unit has been made a party to the present proceedings in the capacity of intervenor. Said intervenor has also filed W/S in this proceedings. The W/S filed by the intervenor is nothing but the act of supporting the contention of the bank. The first party bank has filed W/S at Ex. 14 alongwith Ex. 15. First party filed 2 circulars dt. 3-7-91 and 14-9-91 issued by the first party. Second party workman deposed in this proceedings at Ex. 25 as well one witness by name Chavan came to be examined below Ex. 27. On the other hand the intervenor also examined one witness by name Chavan came to be examined below Ex. 27. However, has not examined any witness in this proceedings. First party however, filed the written arguments in this proceedings below Ex. 33. As much considering the overall contentions raised by the first party, second party as well the proceedings below Ex. 33. As such considering the overall intervenor alongwith the oral and documentary evidence of the respective parties the present issue requires to be dealt with. The second party workman was due for promotion on post being fall vacant in the year 1990 in the capacity of Special Assistant Allowance. There was provision in the settlement of 1977 about procedure to be followed while filling of the vacancy as well while entering settlement of 1991 the provision regarding filling of the vacancy fall vacant has been narrated in the said settlement as agreed between the parties. As per the settlement of 1991 the previous settlements, understandings, agreements, practices in respect of local, regional, zonal or otherwise which have been covered in the settlement of 1991 have been superseded. As such at the time of existence and operation of the 1991 settlement the previous settlement do not required to be taken into consideration by either of the parties. In fact the previous settlements as well as provisions thereof came to be

repealed by settlement of 1991. The first party in the present Reference has taken the contention that promotion which was offered to the concerned workman was under the provisions of settlement of 1977 as well the vacancy was of 1990 and therefore, the action of the first party of debarring the workman concerned for 5 years is as per the provisions of the said settlement of 1977 only. However, the post which was vacant in the year 1990 has not been filled-up by the first party till the workman concerned was offered said post at Akulji branch. The workman concerned was interviewed on 19-7-91 to fill-up said vacancy. The settlement of 1991 has taken place on 16-2-91. As such the process of interview and offering the post of Special Assistant Allowance was also subsequent to the entering into the settlement of 1991. However, according to the first party though the post was offered and interview had taken place subsequent to the settlement of 1991 the provisions of 1991 settlement cannot be made applicable and the post which was offered to the workman concerned had to be dealt with according to the settlement of 1977. However, considering the oral and documentary evidence of the respective parties and on going through the written arguments submitted by the first party I am of the view that as per the settlement of 1977 the vacant post was due to be filled-up within specified time. Admittedly the said post was not filled-up within stipulated time by the first party as well no procedure of interview and selection had taken place prior to entering into the settlement of 1991. As well as per the settlement of 1991 the previous settlement has been declared as superseded and therefore once the settlement of 1991 was in force on the day the post was offered to the workman concerned and on the day of interview the previous settlements having been superseded the procedure ought to have been followed by the first party was that or in accordance with the settlement of 1991. The settlement of 1991 having been in existence since Feb, 1991 the provisions therein are required to be followed while filling of the vacancies. Even though there is provision in the settlement of 1991 under Clause 4(ii) regarding the debarring employee for 5 years said provision would apply to the workman concerned if he would have been dealt with and given opportunity in accordance with the provisions of 1991 settlement. The action of the first party of debarring second party workman in view of the settlement of 1977 and taking shelter of settlement of 1977 while filling of the vacancy which fall vacant in 1990 is totally wrong concept. Once the settlement has been superseded question of existence of the same does not survive at all. Each and every action after superseding of the previous-settlement will have to be dealt with as per the existing settlement only. As such the action of the first party that of debarring the workman concerned for 5 years in my opinion is illegal and against the provision of law. In fact there is no settled law which supports the contention raised by the first party of debarring the employee on the basis of previous settlement which has been superseded by the existing settlement. In my opinion the action of the first party is null and void and deserves to be set aside. Ld. Advocate appearing for the first party placed reliance on Tata Chemicals Vs Workmen reported in 1978 LIC page 637 wherein the ratio laid down therein has been relied upon by the first party is that of :—

"Even if a settlement regarding certain demand is arrived at otherwise than during the conciliation proceeding between the employer and the Union representing majority workmen the same is not binding on the other union who represents minority workmen and who was not a party to that settlement. The other union can, therefore, raise the dispute in respect of the demand covered by the settlement and the same can be validly referred for adjudication."

On perusal of the said ratio it is crystal clear that the issue involved therein was the binding effect of settlement on minority union when settlement has not been entered into in conciliation. Further more the union which is in minority has also been given the right to raise dispute about any grievance though the dispute has been covered by the settlement with majority union. In my opinion the ratio laid down therein in no way supports the contention raised by the first party. Ld. Advocate appearing for the first party also placed reliance on Scindia Steam Navigation Co. Vs. Scindia Employees' Union reported in 1983 LIC 759 wherein the ratio laid down by the Hon. High Court Bombay on which reliance has been placed is as follows :—

"All the employees do not as matter of fact become parties to the agreement except for the provisions in S. 18(1) and all that Sec. 18(1) does is that the fact that the settlement is binding on the parties to the settlement is declared, thereby meaning that though only the representatives have signed it, the agreement also binds those whom the representatives represented. Therefore, the only manner in which S. 18(1) can be read is that it has the effect of making the terms of the settlement a part of the contract of employment of such individual workman. Thus if the terms of an agreement which is described as a settlement under S. 2(p) by virtue of the effect of extension brought about by S. 18(1) of the Act is nothing more than making the terms of settlement a part of contract of employment on terms of employment, it is difficult to hold that provisions of S. 18(1) have the effect of creating statutory duty or a public duty against any party to the agreement."

The aforesaid ratio is settled and here is no dispute or second opinion about the same. However, said ratio nowhere supports the contention of the first party. Ld. Advocate appearing for the first party draws my attention to rule 58(4) of the Central Rules of Industrial Disputes Act. Said rule provides for sending of copies to the authorities and that is provision in the Act. Therefore, there is no dispute about the said provision so far as the present Reference is concerned. The settlement of 1991 also provides provision of debarring the employee for the period of 5 years on his refusal to accept the assignment. However, said provision would apply only as and when the first party accepts and admits that the workman concerned has been given opportunity as per the provisions of settlement of 1991 and not otherwise. It is pertinent to note that the parties concerned in the present proceedings having brought on record the letter dt. 5-9-91 as well the circular issued by the first party for the purpose of interview calling upon the application and selection proceedings under which the workman concerned came to be selected and subsequently debarrased. As such in my opinion, the action of the first party is not in accordance with the provisions of law but appears to be arbitrary and without proper application of mind. In my opinion, on considering the oral and documentary evidence on record the second party has established that the action of the first party is illegal and deserves to be set aside. Accordingly I answer the issue.

**6. Issue No. 2 & 3.**—Since the action of the first party has been held as illegal as well letter dt. 5-9-91 under which the workman concerned came to be debarrased with retrospective effect from 5-8-91 is illegal in my opinion there was no question of debarring the employee with retrospective effect or else the first party ought to have taken the action on or before 6-8-91 itself. The act of the first party of giving effect with retrospective effect regarding the debarring employee does not appear to be proper but it small's victimisation also for the reason that the workman concerned is a member of another union and not represented by All India Bank of Baroda Employees Federation. Under these circumstances the second party and workman concerned are entitled for the reliefs. Since the present Reference has been sponsored by the second party and the workman being member of the same the relief sought in the present Reference deserves to be granted and accordingly I answer the issue and proceed to pass the following order :

#### ORDER

- The Reference is allowed.
- The action of the first party under letter dated 5-9-91 whereby Shri R. R. Chavan came to be debarrased for five years is illegal. Said letter is hereby set aside and the first party bank is hereby directed to deal with the case of Shri R. R. Chavan in accordance with the provisions of settlement of 1991 as well to consider him for the promotion. The first party is further directed to provide benefits arising out of settlement of 1991 due to setting aside of 5-9-91 order. The first party is hereby directed to act accordingly within the period of one month from today.

P. S. SHINDE, Presiding Officer

नई दिल्ली, 4 जून, 1997

का.आ. 1630—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल बैंक आफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजक और उनके कर्मकारों के बीच अनुबन्ध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण, कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-6-97 को प्राप्त हुआ था।

[सं. एल-12012/169/94-आई आर (बी-II)]  
सनातन, डैस्क अधिकारी

New Delhi, the 4th June, 1997

S.O. 1630.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of Central Bank of India and their workmen, which was received by the Central Government on 2-6-1997.

[No. L-12012/169/94-IR (B-II)]  
SANATAN, Desk Officer

#### ANNEXURE

BEFORE SRI B. K. SRIVASTAVA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, PANDU NAGAR, KANPUR

Industrial Dispute No. 84 of 1991

In the matter of dispute :

#### BETWEEN

Regional Manager, Central Bank of India,  
Regional Office, 73, Hazaratganj, Lucknow.

#### AND

Ashok Kumar C/o Central Bank Employees Congress  
B. V. Prasad Nagar Mahapalika School, Rahim  
Nagar, Lucknow.

#### AWARD

1. Central Government, Ministry of Labour, New Delhi, vide its Notification No. L-12012/169/94-IR (B-II) dated 26th September, 1994, has referred the following dispute for adjudication to this Tribunal—

Whether the demand of the Central Bank Employees Congress UP on the management of Central Bank of India, Lucknow for regularisation of services of Ashok Kumar Part time Sweeper is justified ? If so, what relief is the said workman entitled to ?

2. The case of the concerned workman Ashok Kumar is that he was appointed as part time safai karamchari in the opposite party Central Bank of India and was paid 1/3rd of wages from 2-7-88. At that time work was being taken for 13 hours per week. There was shortage of peons at Manak Nagar Branch at Lucknow, hence work of peon was taken from him and he was forced to work for more than 13 hours a week. He was asked to carry clearance work to Hazaratganj Branch. When he requested the Branch Manager to pay him full wages the latter asked him to keep mum as in due course he will be paid full wages. In this way from 15-9-88 to July 1991 he carried the work of clearing documents to Hazaratganj for which allowance was paid. In this way as he was doing the work of permanent nature he was entitled for regularisation.

3. The opposite party has filed reply in which it has been denied that the concerned workman was doing any work of permanent nature and that he had done any excess of 13 hours of work.

4. In the rejoinder nothing new has been alleged.

5. Although both the parties has adduced the evidence, it need not be referred as the reference can be answered in the negative on a very short point. In the case of Ashwani Versus State of Bihar 1997 Lab IC 578 application for regularisation has not been allowed by the Hon'ble Supreme Court. The requirement for regularisation is that there should be a clear vacancy available on which appointment is made on ad hoc basis of as daily wager, by the appointing authority and is continued from time to time. In the instant case it is not the case of concerned workman that he was appointed even on ad hoc basis on the post of peon by any authority much less, appointing authority. In its absence in view of above authority the concerned workman on his own pleading will not be entitled for regularisation. At the most according to claim statement if found true would make out a case of increase in wages as given in para 4.5 of bipartite settlement.

6. Hence, my award is that concerned workman is not entitled for regularisation in the circumstances of the case. In this way he is not entitled for any relief.

7. Reference is answered accordingly.

Dated : 8-5-1997

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 4 जून, 1997

का.आ. 1631—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण, कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-6-97 को प्राप्त हुआ था।

[संख्या एल-12012/271/90-आई आर (बी-II)]

सनातन, डैस्क अधिकारी

New Delhi, the 4th June, 1997

S.O. 1631.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employer in relation to the management of Punjab National Bank and their workmen, which was received by the Central Government on 2-6-1997.

[No. L-12012/271/90-IR (B-II)]

SANATAN, Desk Officer

#### ANNEXURE

BEFORE SRI B. K. SRIVASTAVA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, PANDU NAGAR, KANPUR

Industrial Dispute No. 24 of 1991

In the matter of dispute :

#### BETWEEN

Jagdish Prasad C/o V. N. Sekhari  
26/104 Birhana Road, Kanpur.

#### AND

Regional Manager  
Punjab National Bank  
Regional Office M. G. Road, Kanpur.

## AWARD

1. Central Government, Ministry of Labour, vide its Notification No. L-12012/271/90-IR (B-II) dated 18-3-91, has referred the following dispute for adjudication to this Tribunal—

Whether the action of the management of Punjab National Bank in terminating the services of Sri Jagdish Prasad, peon is justified ? If not, to what relief is the workman entitled to ?

2. The case of the concerned workman Jagdish Prasad is that he was engaged in the subordinate cadre by the opposite party Punjab National Bank as peon cum waterman cum cycle lifter and was paid Rs. 5 per day w.e.f. 3-8-82 and he worked upto 16-8-89 when his services were brought to an end in breach of Section 25-F, G and H of I. D. Act.

3. The opposite party has filed reply.

4. In support of his case the concerned workman has adduced his evidence as Jagdish Prasad WW-1 in rebuttal there is evidence of Manager Surendra Pratap Singh MW-1. Besides there are Ext. M-1 to M-37 credit cash vouchers.

5. Although the concerned workman in his evidence has stated that in addition to the work of taking cycles on upper storey he was also required to do work of peon. In his cross examination he has stated that he was not given any appointment letter. He has denied the suggestion that he was part time cycle lifter, however, he was paid through vouchtrs. There are Ext. M-1 to M-37 vouchers in which the concerned workman has been shown to have given labour charges for taking cycles on the first floor. Apart from this the management have adduced evidence that there were other persons who were doing the work of peon at Meson Road Branch of the opposite party. Taking into consideration the above evidence my finding is that the concerned workman was doing the job of taking cycles on the upper storey in the office and bringing back in the evening which is certainly connected with the functioning of the bank.

6. It has already been held that the concerned workman was engaged for carrying cycles on the upper storey of the building at the rate of Rs. 5 per day and it was connected with the functioning of the bank. Hence he is a part time worker and certainly provisions of I. D. Act do apply to such part time workers as well. The concerned workman has also stated that he had worked for more than 240 days in a year before his termination, the management has not filed all the vouchers to discredit this fact. In its absence, I accept the evidence of workman and hold that he had completed 240 days in a year hence provisions of Section 25-F, G and H were applicable to him. Admittedly he was not paid retrenchment compensation and notice pay hence his termination is bad in law, because of breach of Section 25-F of I. D. Act. Accordingly, my award is that retrenchment of the concerned workman is bad in law. Still will not be entitled for reinstatement as he was doing work which is not of permanent nature. Instead a sum of Rs. 5,000 would be enough as compensation in lieu of reinstatement which the concerned workman will be entitled to get from the opposite party.

Dated : 9-5-1997

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 4 जून, 1997

का. आ. 1632.—प्रौद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक आफ बड़ौदा के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट प्रौद्योगिक विवाद में केन्द्रीय सरकार प्रौद्योगिक अधिकरण कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-6-97 को प्राप्त हुआ था।

[संख्या:एल-12012/389/91-प्राई घार (बी-II)]

सनातन, डैम्स अधिकारी

New Delhi, the 4th June, 1997

S.O. 1632.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of Baroda and their workmen, which was received by the Central Government on 2nd June, 1997.

[No. L-12012/389/91-IR(B-II)]

SANATAN, Desk Officer

## ANNEXURE

BEFORE SHRI R. K. SRIVASTAVA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DEOKI PALACE ROAD, PANDU NAGAR, KANPUR

Industrial Dispute No. 28 of 1992

In the matter of dispute between :

Rakesh Kumar Misra,  
C/o Shri O. P. Nigam,  
295/387, Deen Dayal Road,  
Ashrafabad, Lucknow.

AND

Asstt. General Manager,  
Bank of Baroda,  
Regional Office,  
Hazratganj, Lucknow.

## AWARD

1. Central Government, Ministry of Labour, New Delhi vide its Notification No. L-12012/389/91-I.R.(B) dated 25th February, 1992 has referred the following dispute for adjudication to this Tribunal :

Whether the action of the Assistant General Manager, Bank of Baroda, Lucknow Zone, in not regularising Shri Rakesh Kumar Misra as Sub-Staff with retrospective effect is justified? If not, to what relief the workman is entitled to ?

3. The authorised representative of concerned workman Shri B. P. Saxena informed that he has no instruction. In view of above the re-

ference is answered against workman for want of prosecution and proof. The concerned workman will not be entitled for any relief.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 4 जून, 1997

का.या. 1633.—श्रीधोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबन्धतंत्र के संबंध में नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निविष्ट श्रीधोगिक विवाद में श्रीधोगिक अधिकरण, कोटा के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-5-97 को प्राप्त हुआ था।

[संख्या एल-12012/173/94 आई आर (बी-II)]

सनातन, डैस्क अधिकारी

New Delhi, the 4th June, 1997

S.O. 1633.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Kota as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workmen, which was received by the Central Government on 29th May, 1997.

[No. L-12012/173/94-IR (B-II)]

SANATAN, Desk Officer

अनुबन्ध

न्यायाधीश, श्रीधोगिक न्यायाधिकरण/केन्द्रीय/कोटा/राज. निर्देश प्रकरण क्रमांक : श्री.न्या. (केन्द्रीय)-12/94

दिनांक स्वापित : 29-10-94

प्रसंग : भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश संख्या एस. 12012/173/94 दिनांक 21-10-94

श्रीधोगिक विवाद अधिनियम, 1947

मध्य

प्रेम बिहारी मीणा द्वारा संगठन सचिव, एसोसिएशन श्राफ़ पी.एन.बी. एम्साइज़, रामपुरा, कोटा।

—प्रार्थी श्रमिक

पंच

क्षेत्रीय प्रबन्धक, पंजाब नेशनल बैंक, भरतपुर।

—प्रतिपक्षी नियोजक

उपस्थित

श्री आर.के. चाचान,  
आर.एव.जे.एस.

प्रार्थी श्रमिक की ओर से प्रतिनिधि :— श्रो बनदेश सिंह  
प्रतिपक्षी नियोजक को ओर से प्रतिनिधि : श्री एस.सी.गुप्ता

अधिनिर्णय दिनांक: 30-4-97

अधिनिर्णय

भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा तिन्हीं श्रीधोगिक विवाद अधिनियम, 1947 (जिसे तदुपरान्त 'अधिनियम' से सम्बोधित किया जावेगा) की धारा 10(1)(III) के अंतर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्बेदित किया गया है :—

"Whether the action of the management of PNB, Bharatpur in imposing the punishment of stoppage of two increment with cumulative effect of Shri Prem Bihari Meena, Clerk/Cashier (on the charge of allegedly submitting take T.A. Claim) vide order dated 22-3-93 is justified? If not, what relief is the said workman entitled to?"

2. निर्देश न्यायाधिकरण में प्राप्त होने पर दर्जे रजिस्टर किया गया व पक्षकारों को सुचना जारी की गयी। प्रार्थी श्रमिक प्रेमबिहारी भीणा के सम्बंध में प्रार्थी यूनियन की ओर से क्लेम स्टेटमेंट प्रस्तुत कर सक्षेप में तथ्य इस प्रकार अंकित किये गये हैं कि प्रार्थी ने यात्रा-भत्ता विल सं 80/91 दिनांक 28-7-91 जो कि 27-8-91 की यात्रा से संबंधित था, बैंक में प्रस्तुत किया एवं भुगतान उठाया। प्रार्थी के विरुद्ध यह आक्षेप लगाया। गया कि प्रार्थी द्वारा यात्रा को स्वयं सत्यापित करके भुगतान प्राप्त करने का अधिकार नहीं था एवं प्रार्थी ने स्वयं ही विल पास कर अपने बचत खाता संख्या 118 में बिना प्रबंधक की अनुमति के राशि जमा की। अपने कृत्य की सूचना निलेने पर प्रार्थी ने अपने बचत खाता संख्या 118 की लेजर को फाइकर नई लेजर शीट बनाकर बैंक रेकार्ड में हेराफेरी की। प्रतिपक्षी ने प्रार्थी को दिनांक 19-11-91 को उक्त तिथि की छूटी यात्रा-भत्ता राशि उठाने के आरोप में जो आरोप-पत्र दिया है वह मनगढ़त व अनिश्चित आरोप है। इस आरोप-पत्र की जांच बाबत श्री आई. सी. जेन त्रिला समन्वय अधिकारी, कोटा को जांच अधिकारी नियुक्त किया गया। जांच अधिकारी ने गवाहान के बयान अंकित कर प्रार्थी के विरुद्ध आरोप साचित मामले हुए अनुचित व अवैध प्रकार से जांच की है। प्रतिपक्षी द्वारा प्रार्थी के विरुद्ध लगाये गये आरोप को सुमिप्रित तात्पर्य से साचित नहीं किया गया बल्कि कल्पना के आधार

पर सही माना है। प्रार्थी को कानूनी याक्ता दिल तिनांकित 27/28-8-91 की प्रतिसिविपि उपसंघ नहीं करायी गयी व वही बचाव का पूर्ण अवसर दिया गया। जांच अधिकारी ने विनांक 27-8-91 को याक्ता से संबंधित करजी बिल दि. 28-8-91 को आरोप पत्र में वशकिर जांच नहीं की। प्रार्थी को गवाहान से पूर्ण रूप से जिरह करने का अवसर नहीं दिया गया। प्रार्थी के विरुद्ध की गयी जांच न्याय के नैसर्गिक सिद्धांतों के अनुरूप नहीं थी। अतः प्रार्थी के विरुद्ध की गयी जांच को अनुचित व अवैध करार देने हुए जो प्रतिपक्षी द्वारा दो वार्षिक वेतन वृद्धि संघयी प्रभाव में रोकने की सजा दी गयी है, उसे निरस्त करके समुचित साम प्रदान किया जाए।

3. प्रतिपक्षी की ओर से उक्त वलेम का जबाब प्रस्तुत किया गया है कि प्रार्थी को दि. 10-11-91 को फरजी याक्ता बिल संख्या 80/91 दि. 28-8-91 जोकि दि. 27-8-91 की याक्ता से संबंधित था वैक में प्रस्तुत किया गया। इस याक्ता को प्रार्थी ने स्वयं ने सत्यपित किया जबकि वह स्वयं इस हेतु अधिकृत नहीं था। प्रार्थी ने याक्ता भक्त विलों को स्वयं ही पास करके अपने बचत खाता संख्या 118 में प्रबंधक की अनुमति के बिना राशि जमा कर ली। प्रार्थी को अपने कृत्य की सूचना मिलने पर बचत संख्या 118 की लेजर शीट फाइकर घूसरी लेजरशीट लगाकर वैक रेकार्ड में हेराफेरी करने की चेष्टा की गयी। प्रार्थी को आरोप-पत्र का जबाब देने का पर्याप्त समय दिया गया। प्रार्थी ने आरोप-पत्र का जाधाब दिया जिससे सन्तुष्ट नहीं होने पर नियमानुसूट जांच अधिकारी श्री प्रार्थी सौ.० जैन को नियुक्त कर जांच करवायी गयी। प्रार्थी को जांच में जांच अधिकारी द्वारा बचाव पक्ष प्रस्तुत करने, गवाहों से जिरह करने का पूर्ण अवसर दिया गया। प्रार्थी को याक्ता विल की कापी जांच के द्वारा उपलब्ध करवायी गयी। उपक्षीय समझौते के प्रावधानों के अन्तर्गत पी० एम० सैनी को प्रस्तुतकर्ता अधिकारी नियुक्त किया गया। प्रतिपक्षी वैक की ओर से उपसिंह व भगवान सिंह गवाह की साथ्य करवायी गयी। प्रार्थी के विरुद्ध जांच अधिकारी द्वारा जांच में नैसर्गिक न्याय सिद्धांतों की पालना करते हुए, मौखिक व दस्तावेजी साध्य का मन्त्यन करते हुए जो जांच की गयी वह पूर्ण रूप से उचित एवं वैध है। तदुपरान्त प्रतिपक्षी द्वारा जांच अधिकारी की जांच रिपोर्ट से सहमत होकर प्रार्थी के विरुद्ध दो वार्षिक वेतन वृद्धि संघयी प्रभाव से रोकने का दण्ड दिया गया वह भी सही है और उसमें किसी प्रकार से हस्तक्षेप की गुजारी नहीं है, अतः प्रार्थी का केन्द्र खारिज किया जाए।

4. प्रार्थी पक्ष वी ओर से विद्वान प्रतिनिधि ने मुख्य बहम यही की है कि प्रार्थी को जांच में बचाव का पूर्ण अवसर महीं दिया गया एवं प्रार्थी के विरुद्ध की गयी जांच नैसर्गिक न्याय सिद्धांतों के अनुरूप नहीं थी। जांच अधिकारी की जांच रिपोर्ट से महमत होकर जो प्रतिपक्षी द्वारा प्रार्थी की दो वार्षिक वेतन वृद्धि संघयी प्रभाव दे रोकने का दण्ड

दिया गया है वह भी सही नहीं है, अतः निरस्त काल समुचित साम प्रदान जावे।

5. प्रतिपक्षी नियोजक के विद्वान प्रतिनिधि ने यह बहस की है कि प्रार्थी ने वैक जैसी सार्वजनिक संस्था में नियोजित द्वेषकर अपने स्वयं की मूली याक्ता का बिल बनाकर पेश किया तथा जब प्रार्थी के विरुद्ध कार्यवाही शुरू हुई तो प्रार्थी ने अपने वैक खाते में हेराफेरी करके लेजर में नवी शीट लगायी। इस आरोप के संबंध में प्रार्थी को आरोप-पत्र देकर नियमानुसार जांच अधिकारी नियुक्त कर जांच अधिकारी द्वारा जांच में नैसर्गिक न्याय सिद्धांतों के अनुरूप प्रार्थी को बचाव का अवसर प्रशान्त कर जो जांच की गयी वह सही एवं उचित है। जांच अधिकारी ने प्रार्थी के विरुद्ध उपलब्ध साक्ष्य के निष्कर्ष से प्रार्थी के विरुद्ध आरोपित आरोप सिद्ध पाया व तदुपरान्त जांच रिपोर्ट से सहमत होकर प्रतिपक्षी द्वारा प्रार्थी के विरुद्ध जो दो वार्षिक वेतन वृद्धि संघयी प्रभाव से रोके जाने का दण्ड दिया गया वह सही एवं उचित है और उसमें हस्तक्षेप की कोई गुजारी नहीं है, अतः प्रार्थी का क्षेम खारिज किया जाए।

6. मैंने पक्षकारों की उक्त बहस पर गौर किया व पक्षाली पर उपलब्ध जांच से संबंधित कागजात व रिपोर्ट का अवलोकन किया।

7. प्रार्थी के विरुद्ध की गयी जांच में जांच अधिकारी द्वारा प्रार्थी की उपस्थिति में साध्य लेखबद्ध की गयी, प्रार्थी को भी बचाव का पूर्ण अवसर दिया गया। जांच अधिकारी द्वारा दोनों पक्षों को सुनकर ही नैसर्गिक न्याय सिद्धांतों की अनुपालना करते हुए अपनी जांच रिपोर्ट में प्रार्थी को दोषी पाया गया है। प्रार्थी को ओर से विद्वान प्रतिनिधि ने ऐसी कोई विशेष आपत्ति मेरे समक्ष नहीं उठायी जिससे यह माना जा सके कि प्रार्थी के विरुद्ध की गयी जांच नैरकानूनी या नैसर्गिक न्याय सिद्धांतों के विरुद्ध थी। अतः मेरी विनाश राय में प्रार्थी के विरुद्ध की गई जांच पूर्ण रूप से उचित एवं वैध है।

8. अब जहां तक प्रार्थी के विरुद्ध दिये गये दण्ड प्रियके अन्तर्गत प्रार्थी की दो वार्षिक वेतन वृद्धियां संघयी प्रभाव से रोकी गयी हैं, का प्रश्न है, चूंकि प्रार्थी के विरुद्ध जांच को उचित एवं वैध मान चुका हूं इसलिए प्रथम सो प्रार्थी को दिये गये दण्डादेश में इस न्यायाद्विकरण को हस्तक्षेप करने की अधिकारिता नहीं है। इसके अतिरिक्त भी प्रार्थी जोकि एक वैक का कर्मचारी है, प्रार्थी द्वारा किये गये कृत्य अपने स्वयं द्वारा याक्ता-भक्ता विल बनाने, उसे पास करने एवं खाते में रकम जमा करने, अपने खाता संख्या 118 की लेजर शीट बदलकर 69/- ६० का भुगतान न विछाने आदि तथ्य इस बात को इतिहास करते हैं कि प्रार्थी का दोष गम्भीर प्रवृत्ति का था जिसके लिए प्रार्थी को दिया गया दण्ड किसी प्रकार अनुचित नहीं कहा जा सकता और प्रार्थी को जो दो वार्षिक वेतन वृद्धि संघयी प्रभाव से रोकने का दण्ड प्रतिपक्षी द्वारा दिया गया है वह उचित एवं वैध है, फक-

स्वेच्छा प्रार्थी किसी प्रकार को कोई रोहत प्राप्त करने का अधिकारी नम्बर जामे के द्वाय मही है।

9. अतः उक्त सम्पूर्ण विवेशन के प्राप्तार पर भारत सरकार श्रम मंत्रालय, नई दिल्ली द्वारा सम्बेदित निर्देश को इस प्रकार उत्तरित किया जाता है कि लेखीय प्रबंधक, पंजाब नेशनल बैंक, भरतपुर द्वारा प्रार्थी को जो आदेश वि. 22-3-93 द्वारा वी वार्षिक बेतन बुद्धि संचयी प्रभाव से रोकने की सजा दी गयी है वह उचित एवं वैध है कलनस्वरूप प्रार्थी किसी प्रकार से कोई रोहत प्राप्त करने का अधिकारी नहीं है।

यह अधिनियम को समुचित सरकार को नियमानुसार प्रकाशनार्थ भिजवाया जावे।

भार के चाचान, न्यायाधीश

नई दिल्ली, 4 जून, 1997

का. आ. 1634—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में ओद्योगिक अधिकरण, कोटा के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-5-97 को प्राप्त हुआ था।

[संख्या ए.ल-12012/172/94-प्राई आर (बी-ii)]

मनातन, डैस्ट्र अधिकारी

New Delhi, the 4th June, 1997

S.O. 1634.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Kota, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workmen, which was received by the Central Government on 29th May, 1997.

[No. L-12012/173/94-IR (B-II)]

SANATAN, Desk Officer

अनुबंध

न्यायाधीश, ओद्योगिक न्यायाधिकरण/केन्द्रीय/कोटा/राज

निर्देश प्रकरण क्रमांक : ओ.स्या. (केन्द्रीय)-13/94

दिनांक स्थापित : 29-10-94

प्रसेग : भारत सरकार श्रम मंत्रालय, नई दिल्ली के व्यावेश संघां य. एस. 12012/172/94 दिनांक 21-10-94

ओद्योगिक विवाद अधिनियम, 1947

मध्य

प्रेमबिहारी मीणा द्वारा महासचिव, राज (ब्लेट) बैंक नेशनल आरगनाइजेशन रामपुरा, कोटा।

—प्रार्थी श्रमिक

एवं

क्षेत्रीय प्रबंधक, पंजाब नेशनल बैंक, भरतपुर  
—प्रतिपक्षी नियोजक

उपस्थित

श्री आर. के. चाचान,

आर. एच. जे. एस

प्रार्थी श्रमिक की ओर से प्रतिनिधि :—श्री बलदेव सिंह प्रतिपक्षी नियोजक की ओर से प्रतिनिधि :—श्री एस. सी. गुप्ता अधिनियम दिनांक 30-4-97

अधिनियम

भारत सरकार श्रम, मंत्रालय, नई दिल्ली द्वारा निम्न निर्देश ओद्योगिक विवाद अधिनियम, 1947 (जिसे तदुपरांत “अधिनियम” से सम्बोधित किया जावेगा) की धारा 10 (1) (घ) के अन्तर्गत इस न्यायाधिकरण को अधिनियमाध सम्बेदित किया गया है :—

“Whether the action of the management of PNB, Bharatpur in imposing the punishment of stoppage of two increments with cumulative effect on Shri Prem Bihari Meena, Clerk/Cashier (on the charge of alleged misbehaviour) vide order dated 26-3-1993 is justified? If not, what relief is the said workman entitled to?”

2. निर्देश न्यायाधिकरण में प्राप्त होने पर वर्ज रजिस्टर किया गया व पकारों को सूचना जारी की गयी। प्रार्थी श्रमिक प्रेम बिहारी मीणा के संबंध में प्रार्थी यूनियन की ओर से क्लेम स्टटमेंट प्रस्तुत कर संक्षेप में तथ्य इस प्रकार अंकित किय गये हैं कि प्रार्थी को प्रतिपक्षी ने दिनांक 7-2-92 को एक छूटा आरोप-पत्र दिया कि प्रार्थी ने पी.एम. सैनी प्रभारी अधिकारी शाखा, कोटा को दिनांक 1-10-91 को थप्पड़ मारी जिससे उनका थमा भी दूर आ कर गिरा। इस प्रकार शाखा प्रभारी के साथ प्रार्थी ने दुष्पर्वहार किया। प्रार्थी के विशद इस मनगठन व झूठे थारोप के विरुद्ध जांच अधिकारी श्री आई.सी. जैन को नियुक्त किया गया जिसने प्राहृतिक घाय सिद्धांतों के विपरीत बिना साक्ष्य के थारोप सिद्ध मात्रकर थपनी जांच रिपोर्ट दी। तदुपरांत प्रतिपक्षी में प्रार्थी की वी वार्षिक बेतन बुद्धियां संचयी प्रभाव से रोकने का दण्ड दिया जो यही नहीं है। प्रार्थी के विशद प्रतिपक्षी ने जांच अधिकारी के समझ एसी कोई

साक्ष्य प्रस्तुत नहीं की जिससे यह सावित हो सके कि प्रार्थी ने पी.एम. सैनी प्रभारी अधिकारी के साथ कोई दुर्घटवहार किया हो। प्रतिपक्षी की ओर से माध्य पर्याप्त माला में प्रस्तुत नहीं की गयी। प्रार्थी को बचाव का अवसर नहीं दिया गया एवं उसी स्वनन्द्र साक्ष्य हुई। प्रार्थी के विशद् उस दिन की घटना की पुनिस भैं रिपोर्ट इज़ करायी गयी जिसमें प्रार्थी के विशद् धारा 107/151 जा.फो. में कार्यात्मकी की गयी। अतः प्रार्थी के विशद् की गयी जांच व दिया गया दण्ड न्याय के नैसर्गिक सिद्धांतों के विपरीत है इसलिए प्रतिपक्षी द्वारा करवायी जांच उचित नहीं है।

3. प्रतिपक्षी नियोजक की ओर से जबाब प्रस्तुत कर अंकित किया गया है कि प्रार्थी पर दि. 1-10-91 की घटना के संबंध में आरोप आरोपित कर नियमानुसार जांच अधिकारी आई.सी. जैन नियुक्त किया गया जिसने अपनी जांच में प्राकृतिक न्याय सिद्धांतों की अनुपालना करते हुए प्रार्थी को बचाव का अवसर प्रदान करते हुए उपलब्ध साक्ष्य व तथ्यों के आधार पर आरोपित आरोप को सिद्ध माना है। तदुपरान्त जांच अधिकारी की रिपोर्ट व दस्तावेजों पर पूर्ण रूप से विचार कर आरोप की गम्भीरता को देखते हुए अनुशासनात्मक अधिकारी ने नरमी का एक रुख अपनाते हुए दो वार्षिक वेतन वृद्धियां संचयी प्रभावी से रोकने का दण्ड दिया जोकि बिल्कुल सही एवं वैध है। अतः प्रार्थी का क्लेम खारिज किया जाये।

4. प्रार्थी पक्ष की ओर से विद्वान प्रतिनिधि ने यह बहस की है कि प्रार्थी के विशद् जो आरोप आरोपित किया गया है उस बाबत जांच अधिकारी ने सही प्रकार से नैसर्गिक न्याय सिद्धांतों के अनुरूप जांच नहीं की, प्रार्थी को जांच में बचाव का अवसर नहीं दिया गया। जांच अधिकारी की जांच रिपोर्ट से सहमत होकर जो प्रतिपक्षी द्वारा प्रार्थी के दो वार्षिक वेतन वृद्धियां संचयी प्रभाव से रोकने का दण्ड दिया गया है वह सही नहीं है और संबंधी दण्डादेश निरस्तनीय है।

5. प्रतिपक्षी की ओर से विद्वान प्रतिनिधि ने उक्त बहस का जवाब देते हुए कहा है कि प्रार्थी के विशद् स्वतन्त्र रूप से बिना किसी पूर्वाग्रह से ग्रसित होकर जांच अधिकारी ने जांच की एवं प्रार्थी के द्वारा किये गये दुर्घटवहार के संबंध में माध्य अंकित की। प्रार्थी की ओर से गवाहान में कोई जिरह नहीं की गयी। प्रार्थी ने जांच अधिकारी पर किसी प्रकार के कोई आक्षेप नहीं लगाये हैं। प्रार्थी पर पी.एम. सैनी शाव्वा प्रभारी के साथ दि. 1-10-91 को अपने कार्यका निर्वहन करने ममय उनके थप्पड़ मारने व दुर्घटवहार करने के संबंध में जो आरोप आरोपित किया गया उसकी नियमानुसार जांच करने पर जांच अधिकारी द्वारा दोषमिळ मानने 1494 GT, 97-4

पर प्रतिपक्षी द्वारा प्रार्थी की जो दो वार्षिक वेतन वृद्धियां संचयी प्रभाव से रोकने का दण्ड दिया है वह किसी प्रकार से अधिक नहीं है। प्रार्थी ने दैनंदी सार्वजनिक संस्थान में स्वयं बैंक का अधिकारी होने हुए अपने प्रभारी अधिकारी के साथ दुर्घटवहार किया है। अतः प्रार्थी का क्लेम खारिज किया जाये।

6. मैंने पक्षकारों की उक्त बहस पर गौर किया एवं पक्षावली पर उपलब्ध जांच अधिकारी की रिपोर्ट से संबंधित कागजात व पक्षावली का अवलोकन किया।

7. प्रार्थी को दिनांक 1-10-91 को पी.एम.सैनी प्रभारी अधिकारी बैंक शाखा कोटड़ी के साथ दुर्घटवहार करने तथा थप्पड़ मारने के संबंध में दि. 7-2-92 को आरोप पक्ष दिया गया। तदुपरान्त जांच अधिकारी ने जांच में साक्ष्य अंकित की प्रार्थी को जिरह करने का अवसर दिया गया। प्रार्थी के विशद् की गयी जांच में सभी न्याय के नैसर्गिक सिद्धांतों की पालना की गयी है। जांच अधिकारी के विशद् प्रार्थी द्वारा किसी प्रकार से आक्षेप नहीं लगाये गये हैं। जांच अधिकारी द्वारा अपने जांच मिक्कीर्ष से प्रार्थी के विशद् आरोपित आरोप में दोष सिद्ध पाने पर प्रतिपक्षी द्वारा दो वार्षिक वेतन वृद्धि संचयी प्रभाव से रोकने का दण्ड दिया गया है। मैंने इस संबंध में प्रतिपक्षी की ओर से पेशांदा जवाब का पूर्ण अवलोकन किया जिसमें सभी जांच के बिन्दुओं को स्पष्ट किया गया है। मेरी विनाश राय में प्रार्थी के विशद् की गयी जांच, में पूर्ण रूप से नियम का पालन करते हुए एवं नैसर्गिक न्याय सिद्धांतों को ध्यान में रखते हुए सम्पन्न की गयी है। अतः प्रार्थी के विशद् की गयी जांच पूर्ण रूप से उचित एवं वैध मानी जाती है।

8. अब जहां तक प्रार्थी के विशद् दिये गये दण्ड का प्रश्न है प्रार्थी ने इसके विशद् कोई अदील नहीं की एवं चूंकि प्रार्थी के विशद् जांच उचित एवं वैध मानी जा चुकी है इसलिये प्रार्थी को दिये \* गये दण्ड में इस न्यायाधिकरण को हस्तक्षेप करने का अधिकार नहीं है। इसके अलावा भी यह सावित पाया जाता है कि प्रार्थी के द्वारा किये गये कुत्य के संबंध में जो दण्ड दिया गया है वह किसी भी प्रकार से अनुचित या अधिक नहीं है। अतः निकर्ष यही निकलता है कि प्रार्थी के विशद् प्रतिपक्षी द्वारा जो दिनांक 26-2-93 के आदेश द्वारा दो वार्षिक वेतन वृद्धि संचयी प्रभाव से रोकने की सजा दी गयी है वह उचित एवं वैध है फलस्वरूप प्रार्थी किसी प्रकार की कोई राहत प्राप्त करने का अधिकारी समझा जाने योग्य नहीं है।

9. अतः उक्त सम्पूर्ण विवेचन के आधार पर भारत सरकार, श्रम संतानाय, नई दिल्ली द्वारा सम्प्रेषित निर्देश को इस प्रकार उत्तरित किया जाता है कि धेत्रीय प्रबन्धक दंजाब नेशनल बैंक भरतपुर द्वारा भ्रात्य [ ] को

जो ग्रादेश वि. 26-2-93 द्वारा दो वार्षिक घेतन धूद्धि संचयी प्रभाव से रोकने की सजा दी गयी है वह उचित एवं वैध है, फलस्वरूप प्रार्थी किसी प्रकार की कोई राहत प्राप्त करने का अधिकारी नहीं है।

इस अधिनियम को समुचित सरकार को नियमानुसार प्रकाशनार्थ भिजवाया जावे।

ग्राम.के. चाचान, न्यायाधीश

नई दिल्ली, 4 जून, 1997

का. आ. 1635.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार देना बैंक के प्रबन्धतंत्र के तंत्रज्ञ नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण मुम्बई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-06-97 को प्राप्त हुआ था।

[संख्या एल—12012/10/96—आई आर (वी—ii)]  
सनातन, डॉ स्क अधिकारी

New Delhi, the 4th June, 1997

S.O. 1635.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Mumbai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Dena Bank and their workmen, which was received by the Central Government on 3-6-97.

[No. L-12012/10/96-I.R.(B-II)]  
SANATAN, Desk Officer

#### ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL  
Tribunal NO. II, MUMBAI

PRESENT :

Shri S. B. Panse, Presiding Officer

Reference No. CGIT-2/46 of 1996

Employers in relation to the Management of Dena  
Bank.

AND

Their Workmen

APPEARANCE :

For the Employer.—S/Shri S. K. Talsania and V. H.  
Kantharia, Advocate.

For the Workmen.—Shri Rabula Humane, Advocate.  
Mumbai, dated 20th May, 1997

#### AWARD-PART-I

The Government of India, Ministry of Labour by its Order No. L-12012/10/96 dated 1-10-96 had referred to the following Industrial Dispute for adjudication :

“Whether the action of the management of Dena Bank, Mumbai in terminating the services of Shri Kuldeo Prasad Goud, Cashier-cum-clerk is legal and justified ? If not, what relief the workman is entitled to ?”

2. Kuldeo Prasad Goud, cashier-cum-clerk the workman filed a statement of claim at Exhibit-2. He contended that in response to an advertisement of the bank in various newspapers for certain clerical posts, he purchased the form and filled the same. It was sent to the employers Banking Service Recruitment Board, Western Group, Mumbai. It is averred that alongwith that form photo copies of necessary application and the caste certificate was enclosed. It was processed by the concerned authorities and he was called for a written examination.

3. The workman pleaded that he got himself cleared from the written examination. He was called for oral interview with original documents and certificates which were verified again as to decide the genuineness of the attested copies which were attached with the Bio data form-cum-application send initially. After due verifications of these documents and after oral interview he was declared to be a successful candidate, and was given a letter of appointment dated 25-2-84. He was allotted to Dena Bank, and posted as clerk-cum-cashier.

4. The workman pleaded that after receiving that letter he approached the Dy. General Manager (Personnel) Dena Bank. He had again directed the workman to fill up and comply with another application for clerks posts which was complied by him and after due scrutiny he was allowed to start work. It is submitted that his services was regularly, efficiently and punctually going on. There was nothing adverse against him. Then he was called for to fill up the form apply the Board for promotion from clearical cadre to officers cadre in Junior Manager, scale, Grade-I. In that form in column No. 3 was clearly marked by him as yes and so far as column No. 4 was concerned he did not mention anything which deals with whether he belongs to SC/ST. According to him as he accepted that the promotion should be given to him as per column No. 3, there was no need of filling column No. 4. It is submitted that later on the employer came to know that there are some administrative errors in respect of his service. They started making queries. He was asked regarding his caste certificate. He gave detailed explanation to it which was not accepted and later on a charge-sheet was issued to him.

5. The workman pleaded that he was charged for securing an employment in the bank under the reserved quota for Scheduled Tribe category and for submission of bogus document/false statement.

6. The workman pleaded that the domestic inquiry which was held against him was against the Principles of Natural Justice. He was not supplied with the documents nor he was given an opportunity to take part in the domestic inquiry. It is submitted that the findings of the inquiry officer are perverse and not based on the evidence before him.

7. The management thereafter accepting the report of the inquiry officer terminated him from service. It is submitted that for the reasons stated above he may be reinstated in service in continuity alongwith full back wages and other reliefs.

8. The management resisted the claim by the written statement Exhibit-4. It is averred that the bank is constituted under the Banking Companies Acquisition and Transfer of Undertaking Act of 1970 and the recruitment in the bank are done from the Banking Service Recruitment Board. It follows the reservation policy as per the brochure on reservation for SC/ST on posts/services in public sector banks/financial institution issued by the Government of India whereby certain percentage of the total vacancies in the bank are reserved for SC/ST candidates.

9. The management pleaded that the workman in his application specifically mentioned that he belonged to the Scheduled Tribe and further specifically denied that he did not belong to Scheduled Caste. It is averred that he asserted this position later on. It is submitted that the workman was appointed as a cashier-cum-clerk in the bank in the vacancy reserved for Scheduled Tribe candidate on 20-3-84.

10. The management averred that in the application dated 15-12-90 which was made by the worker for a promotion, he did not state that he belonged to the Scheduled Tribe by

concealing both yes and no. He also concealed the fact that whether he belongs to Scheduled caste or not. Therefore the bank by letter dated 17-1-91 asked him to clarify the position. In reply to that letter informed that he belonged to Scheduled Tribe category. He produced the certificate wherein it is shown that he belonged to Goud caste which was considered as Scheduled caste in the State of Uttar Pradesh.

11. The management pleaded that the stand which was taken by the workman was inconsistent. He was called upon to give a fresh caste certificate. Then he gave explanation and pleaded that by oversight and misunderstanding he declared that he belonged to ST, but intact he belonged to SC. Thereafter the bank wrote a letter to the District Collector, Azamgarh, Uttar Pradesh and requested him to clarify the position. He gave a reply to it and informed that the worker belonged to Kamar caste and the same was backward caste. Thereafter a charge-sheet was issued to him and a domestic inquiry was conducted.

12. The management pleaded that the domestic inquiry was as per the Principles of Natural Justice. The inquiry officer gave sufficient opportunity to the worker to appear and cross-examined the witness but he did not. He was supplied with the necessary documents. It is submitted that the findings of the inquiry officer are based on the evidence before him and the inquiry officer rightly came to the conclusion that one charge is proved. It is submitted that the disciplinary authority after following due procedure, had passed a proper order terminating the services of the workman. It is averred that the workman is not entitled to any of the reliefs.

13. The issues are framed at Exhibit-9. Issues Nos. 1 and 2 are treated as a preliminary issue. The issues and my findings thereon are as follows :

Issues	Findings.
1. Whether the domestic inquiry which was held against the workman was against the Principles of Natural Justice ?	No.
2. Whether the findings of the inquiry officer are perverse ?	No.

#### REASONS

14. Some of the facts can be said to be not in dispute. Kuldeo Prakash Goud in response to the banks advertisement filed a Bio-data form Ex-6/1 to the Banking Service Recruitment Board. It is dated 8-1-84. In this from column-8 deals with whether he belongs to the member of Scheduled caste. He had answered it as 'No'. Column-8 (b) reads whether he is a member of Scheduled Tribe. He answered it as 'Yes'. Exhibit-6/2 is a letter of Secretary of Banking Service Recruitment Board where in he is shown to be allotted to the post of clerk in Dena Bank in category Scheduled Tribe. Ex-6/3 is Dena Banks Bio-data dated 19-3-84 wherein in clause 10 there is a question to the effect that whether he belonged to SC/ST wherein he answered as yes. He is also asked to produce the caste certificate from the competent authority. As such the caste certificate was produced alongwith it which is dated 10-6-80 and is at Exhibit-6/8. In the said certificate it is categorically mentioned that he belongs to the Goud caste which is Scheduled caste.

15. It appears that eventhough such a certificate was produced the worker could get the employment. Thereafter he filed a form which is called as a Junior Management Grade. Scale-1, Ex-6/4. In this form Column No. 3 refers to whether the candidate wish to accept the promotion if selected under the merit channel for which he answered 'Yes' and so far as Column No. 4 is concerned he did not give any reply. That column deals with whether he belongs to Scheduled Caste or he belongs to Scheduled Tribe. As there was no specific mention by the worker to that query he was specifically asked what he has to say. Then he had given explanation he belongs to Scheduled Caste and had submitted a certificate. He could get an employment as ST candidate. In the result the explanation which was given by the worker was not accepted. It is therefore the bank issued a charge-sheet Exhibit-7/1 to the workman.

16. In the charge-sheet dated 29-4-93 it was contended that he secured an employment in the Bank under the reserved quota for ST category by submission of bogus documents/false statement. Thereafter the domestic inquiry was conducted against him. The inquiry officer by his report Exhibit-7/5 came to the conclusion that the worker did not submit the false document for getting the employment but he had given a false statement.

17. Kuldeo Goud (Exhibit-8) in categorical term admits that he and his representative were present in the inquiry. He followed the contents of the charge-sheet. He received the documents on 29-4-93 and then asked for adjournment for studying them. The inquiry officer granted adjournment. The next date of the hearing was 20-7-93. On that day he remained present alongwith his representative Mr. S. J. Bayan. He was the representative of his choice. Then they asked for adjournment. He accept the position that it was granted and they were given inspection of the documents which they asked. On adjourned dates that is 28-8-93 in their presence Manager examined one Mr. Kokane as their witness. Then the defence representative asked for adjournment which was granted and the matter was fixed for hearing on 6-9-93. On that date both of them remained absent. He had not submitted any application through anybody nor informed the inquiry officer regarding their remaining absent. These facts are corroborated by Ramarao (Ex-11) the inquiry officer. In other words the grievance which is made by the workman in the statement of claim that he did not receive the documents is without any merit. So far as the conduction of the inquiry is concerned I do not find that it was conducted hurriedly or behind the back of the worker.

18. The Learned Advocate for the worker Mr. Humane in his lucid argument submitted that inquiry officer decided to proceed with the matter Ex-parte, as the worker and his representative remained absent. No doubt the inquiry officer has used the word 'Ex. parte'. It does not mean that he had taken a particular view. The word 'Ex. parte' does not denote that meaning. It means in the absence of that party he has to proceed. It can be further seen that Rao had given an opportunity to the workman to submit his written argument if he chooses to do so; He was tried to be informed by registered post and by a messenger. Infact that was not necessary for the inquiry officer to do so. When the matter was for hearing it was the duty of the workman to remain present there. But the inquiry officer had taken care that the worker should get an opportunity to give his argument in the matter. Eventhough he did not cross examine the management witness. I do not think that any illegality or any act which can be said to against the Principles of Natural Justice was committed by the inquiry officer in the said inquiry.

19. Even for the sake of argument if it is said that the witness is not cross-examined by the worker, but that has not caused any prejudice at all. What that witness had done is only produced the documents which were in the custody of the bank. The worker was aware of the contents of those documents. This witness was nothing to be cross-examined in respect of it. Under such circumstances I do not find that any prejudice is caused to the worker.

20. The representative of the worker was from an open category. It was of his choice. Therefore the argument which is tried to be advanced on behalf of the worker that the inquiry officer had a bias in his mind against the worker is he belongs to open category is without any merit.

21. For the above said reasons I find that there is no merit in the contention of the workman that he was not supplied the material documents though he had demanded them, that he was not given sufficient opportunity to participate and defend his case. I therefore find that the inquiry which was held against the workman was as per the principles of Natural Justice.

22. The inquiry officer had given his report which at Exhibit-7/5. The officer had considered all documents on the record and had given due weightage to the same. There were two charges against the workman. One was securing an employment in the bank under the reserved quota for sche-

Auled caste category by false statement and the other one was submission of bogus documents. So far as submission of bogus documents is concerned he came to the conclusion that the workman had not done so. But so far as securing an employment in Scheduled Tribe category by giving false statement is concerned he came to the conclusion that it is proved. While coming to this conclusion the inquiry officer had considered the Bio-data form dtd. 8-1-84, application form dtd. 19-3-84, application form dtd. 15-12-90 for promotion, copy of the representation dated 29-1-91, submitted by the workman reiterating that he belong to ST, copy of the letter addressed by the Chief Manager to the workman dated 23-12-91, copy of letter dated 13-7-92, submitted by the workman to Chief Manager, his reply to the letter dtd. 23-12-91, copy of the letter addressed by the Personnel department to the District Magistrate, Azamgarh, Uttar Pradesh for verification of caste certificate given by the worker dated 1-8-92 and the reply given by the District Collector Azamgarh dated 8-12-92. The collector had replied that the workman does not belong to ST category. Goud is Kahar by caste and is a backward. All these facts which were on the record were duly considered by the inquiry officer for coming to the right conclusion. I therefore do not find that the findings of the inquiry officer are perverse. For all these reasons I record my findings on the issues accordingly and pass the following order :

#### ORDER

The domestic inquiry which was held against the workman was as per the principles of Natural Justice.

The findings of the inquiry officer are not perverse.

S. B. PANSE, Presiding Officer

नई दिल्ली, 4 जून, 1997

का. आ. 1636.—बौद्धोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिडिकेट बैंक के प्रबन्धतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में तिविष्ट बौद्धोगिक विवाद में केन्द्रीय सरकार बौद्धोगिक अधिकरण कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 02-06-97 को प्राप्त हुआ था।

[संख्या एस--12012/182/97--आई आर ( बी--ii)]  
सनातन, डॉ स्टड अधिकारी

New Delhi, the 4th June, 1997

S.O. 1636.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in relation to the management of Syndicate Bank and their workmen, which was received by the Central Government on 2-6-1997.

[No. L-12012/182/94-IR (B-II)]  
SANATAN, Desk Officer

#### ANNEXURE

BEFORE SRI B. K. SRIVASTAVA PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL—  
CUM-LABOUR COURT, PANDU NAGAR, DEOKI  
PALACE ROAD, KANPUR

Industrial Dispute No. 90 of 1994

In the matter of dispute :

#### BETWEEN

Rajan Singh C/o M. Shakeel,  
1 Abdul Aziz Road Nakhas,  
Lucknow.

#### AND

Regional Manager  
Syndicate Bank  
3/28 Naval Kishore Road  
Lucknow.

#### APPEARANCE :

M. Shakeel—for the workman and  
V. P. Srivastava—for the Management.

#### AWARD

1. Central Government, Ministry of Labour, New Delhi, vide its Notification No. I-12012/182/94-IR (B-II) dated 8-11-1994, has referred the following dispute for adjudication to this Tribunal—

Whether the action of the management of Syndicate Bank, Lucknow, in terminating the services of Sri Rajan Singh, Driver, w.e.f. 1-1-92 is legal and justified ? If not, what relief to the said workman is entitled to ?

2. The case of the concerned workman Rajan Singh is that he was engaged by the opposite party Syndicate Bank as a driver at Zonal Office Lucknow on 23-9-89. No appointment letter was given to him. He was paid Rs. 400 per month. He continuously worked upto 23rd September, 1990 and thereby he had completed 240 days. He represented that he should be paid Rs. 900 per month as regular driver is being paid thereupon his services were illegally terminated without payment of retrenchment compensation and notice pay. Hence, this termination is bad in law.

3. The case of the management is that the concerned workman was not a employee on the bank. Instead he was a personal driver of Regional Manager Syndicate Bank of Zonal Office. There is no relationship of master and servant between the two. Hence the concerned workman is not entitled for any relief.

4. In the rejoinder it has been denied that the concerned workman was personal driver of Regional Manager.

5. In support of his case the concerned workman has examined himself as Rajan Singh. WW-1, whereas management has examined Awadhesh Tiwari Public Relation Officer MW-1. Besides the management has filed Ext. M-1 to M-4 vouchers through which Rs. 400 were paid to the concerned workman for the month of February, March, April and May 1990. Besides Ext. MW-5 is the copy of saving bank account of the concerned workman have been filed to show that Rs. 400 was paid to him as salary. In his evidence Rajan Singh has stated that he was driving the vehicle No. UHG 8438 of the bank. Petrol etc. was supplied by the bank. Payment of salary was paid through cheque. In his cross examination he has stated that P. S. Krishnan was the Divisional Manager of the Bank at Lucknow. The cheque for pay was given by Krishnan and its payment were made at Extension Counter of the bank. He has also admitted that Ext. M-1 to M-4 bears his signatures.

6. Awadhesh Tiwari MW-1 has stated that the concerned workman was the personal driver of Zonal Manager. No attendance was recorded in the office of the bank. He was also not paid salary from the bank.

7. After review of above evidence my finding is that the concerned workman was the personal driver of Zonal Manager, but was paid wages through the bank and he was also driving the vehicle provided by the bank. In the case of The Employers in Relation to Punjab National Bank and Gulam Dastagir FLR 1978 (Vol. 36) 198, it has been held by the Hon'ble Supreme Court that a driver of the nature as observed earlier was not the workman of the bank. Hence my finding is that the concerned workman was not the employee of the bank. Still in this very case the practice of engaging driver in such situation was depicted and such a driver was awarded compensation. On the same analogy, my award is that the concerned workman was not an employee of the bank. Hence, question of termination of services of such person does not arise. Still he will be entitled for Rs. 5,000 by way of compensation was awarded in the above mentioned case.

Dated : 28-5-1997

B. K. SRIVASTAVA, Presiding Officer

मई विल्सनी, 4 जून, 1997

का. आ. 1637.—बोर्डोगिक विकाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में, केन्द्रीय सरकार बँक ऑफ महाराष्ट्र के प्रबन्धातंत्र के संबंध नियोजकों और उनके कर्मकारों के दोच, अनुबंध में निर्दिष्ट और्डोगिक विकाद में केन्द्रीय सरकार और्डोगिक अधिकरण, मुम्बई के पंचाद को प्रकाशित करती है, जो केन्द्रीय सरकार का 3-6-97 को प्राप्त हुआ था।

[संख्या एल. -- 12012/50/88 डी-II ए / आई आर (बो-II)]

सनातन, उंस्क अधिकारी

New Delhi, the 4th June, 1997

S.O. 1637.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government before the Industrial Tribunal, Mumbai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of Maharashtra and their workmen which was received by the Central Government on 3-6-97.

[No. L-12012/50/88-D-II-A/IR(B-II)]  
SANATAN, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT :

Shri S. B. Panse, Presiding Officer

Reference No. CGIT-2/1 of 1997

(Old Reference No. CGIT-2/42 of 1988)

Employers in relation to the Management of Bank of Maharashtra.

AND

Their Workmen

#### APPEARANCES :

For the Employer.—Shri A. P. Nayak, Representative.

For the Workmen.—Shri Vinayak Karmakar, Representative.

Mumbai, dated 8th May, 1997

#### AWARD

The Government of India, Ministry of Labour by its Order No. L-12012/50/88-D-II(A) dated 27-10-1988, had referred to the following Industrial dispute for adjudication:

"Whether the action of the management of Bank of Maharashtra in terminating the services of Shri Sanjay Ramchandra Adam was justified? If not, what relief the workman entitled?"

2. The union filed a statement of claim at Exhibit-2. It is contended that one Mr. Lal was working as a permanent part time sub-staff, sweeper at Jamsande branch of Bank of Maharashtra in the Sindhudurg district. He was promoted as a full time sub-staff and was posted at Talgir branch of the bank. There existed a permanent post and vacancy of part time sub-staff sweeper at Jamsande branch.

3. Sanjay Adam, the workman came to know regarding the said permanent vacancy and applied for the same post on 20-5-86. On the next date he was called by the Manager and after interviewing him he was given an appointment letter.

He was asked to join the duties from 22-5-86 which he did. His wages were Rs. 100 per month.

4. It is the case of the union that the manager told Adam that the post on which he was appointed is a permanent post and if he satisfactorily do the work he will be permanently posted there. He was also informed that the candidates from the employment exchange who were referred to them are not willing to work. The management was willing to continue him but under the pressure of the employment exchange officer and under the presumption that the employment exchange (Notification and Vacancies) Act is binding and applicable, the management terminated his services with effect from 4-12-86. It is submitted that he continuously worked till his termination. He was not given any prior notice or the wages in lieu of the notice. It is contended that the spirit and the manner in which he was appointed in the bank service showed that his appointment was made provisionally to fill in the permanent vacancy at the said branch. It is pleaded that he was appointed as a probationer under Clause-23.15 of the Desai Award.

5. The union contended that as per paragraph 495 of the Shastri Award Adam was deemed to be confirmed in the banks service as he had completed six months service. As such the action of the bank management in discontinuing him within the ambit of section 25F read with section 2(oo) of the Industrial Disputes Act of 1947. It is averred that his discontinuing amounts to retrenchment. This action is illegal. It is therefore prayed that Adam may be reinstated in service in continuity along with full back wages and other reliefs.

6. The Assistant General Manager (Industrial Relations) of the bank filed a written statement at Exhibit-3. It is pleaded that the union which espoused the cause of the workman is not registered under the Trade Union Act of 1926 and the workman had not given any authority to it. It is therefore submitted that the said union has no locus standi to espouse the case on behalf of the workman.

7. The management pleaded that Adam was appointed as a part time sub-staff purely on temporary basis at the Jamsande Branch of the bank. The action of the bank to appoint as a temporary workman against permanent vacancy was within its right and it was only to the misfortune of the workman in not getting himself selected for the said post. It is pleaded that he was not appointed as a probationer and as such the provisions of paragraph 495 of the Shastri Award do not apply to the present case. It is averred that he was appointed from 22-5-86 but it was not in clear vacancy. It is submitted that the appointment of the workman in question did not attract the provisions of clause-23.15 of the Desai Award. It is submitted that the section 25F read with Section 2(oo) of the Industrial Disputes Act has no application to the present set of facts and his discontinuation does not amount to a retrenchment. It is submitted that the action of the management is perfectly legal and proper and the workman is not entitled to any of the reliefs.

8. My Learned Predecessor passed an award on 22-7-91. He justified the action of the management in terminating the services of Adam. Being aggrieved by the said Award the union preferred a writ petition bearing No. 1963 of 1992. His Lordships allowed the writ and remanded the matter for rehearing. After remand issues are framed at Exhibit-31 and the parties are allowed to lead evidence in the matter. On behalf of the union one Mr. Narhar Kuvalekar (Exhibit-25) clerk in the said branch at the relevant time and Adam (Exhibit-26) the worker examined themselves. As against that nobody entered in to the witness box on behalf of the management. The documents were already on the record but even then the union produced some documents alongwith Exhibit-24. I heard the Learned Representative for both the sides in length. They also filed a written arguments on record.

9. The issues and my findings there on are as follows :

1. Whether Sanjay Adam was appointed As a probationer or a casual worker ?
2. Whether the termination of Adam amounts to retrenchment contemplated under the I.D. Act, 1947 Yes.

3. If yes, whether non compliance of the provisions of Section 25F of the Industrial Disputes Act of 1947 the termination is void?	Yes.
4. Whether the Bank of Maharashtra Karmachari Sangh has locus standi to espouse the case on behalf of the workman Adam?	Yes.
5. Whether the provisions of the employment exchange (Compulsory Notification of Vacancies Act of 1959) are not applicable to the post of sweeper of the bank	Yes.
6. Whether the action of the management of the Bank of Maharashtra in terminating the services of Sanjay Adam was justified?	No.
7. If not, what relief the workman is entitled to?	Reinstatement.

#### REASONS

10. The statement of claim was filed by the zonal secretary of the Bank of Maharashtra Karmachari Sangh, Kolhapur on 21-2-89. The certificate of Registration (Exhibit-14) speaks that the Sangh which is located at Kolhapur is registered under the Trade Unions Act on 5-6-89 that is after filing of the statement of claim. It is therefore submitted on behalf of the management as the Sangh is not registered trade union it has no locus standi to espouse the cause on behalf of the workman. But it can be seen from the circular dated 15th July, 1985 (Ex-13) issued by the Bank of Maharashtra, Pune that the bank had discussions with the Bank of Maharashtra Karmachari Sangh on certain points. The Sangh a registered trade union which had jurisdiction over branches at Maharashtra and South India. Naturally the union of the workman at Kolhapur was under the control and within the jurisdiction of the Bank of Maharashtra Karmachari Sangh, Pune. Therefore that union is quite competent to espouse the cause of the worker. Seriously speaking the management had not disputed this position before me.

11. Certain facts can be said to be not in dispute. The post of part time sub-staff/sweeper was a permanent one and Adam the worker worked continuously for more than 180 days that is more than six months. It was because he was appointed by the letter (Exhibit-12) dated 21-5-86. He gave an application for the post on 20-5-86. He was asked to join the duty from 25-5-86. It is categorically mentioned in that order that he is appointed as a sweeper on temporary basis. The said appointment is of a temporary nature. The worker was asked to take note of this fact. But the circumstances speak that he was a probationer and not a casual worker as mentioned in the appointment letter. He was later on removed from the job w.e.f. 3-12-86. While doing so he was given a letter dated 4-12-86 (Exhibit-24/3). In this letter it is specifically mentioned that the services of the sweeper are discontinued from today since another candidate sponsored by the employment exchange is selected by them. His working was satisfactory.

12. Narhar Kuvelkar (Exhibit-25) the clerk who was working in that branch at the relevant time and Sanjay Adam (Exhibit-26) corroborates each other on the point that the candidates who were sent by the employment exchange were not agreeable to work on a salary of Rs. 100 there. They also affirmed that Adam was found suitable as he was residing in the near by locality and looking to the nature of his work the person who resides near by is required for that job. They also affirmed that he was assured to give a job permanently by the then branch manager. Their testimony is supported by the documentary evidence on the record. The Branch Manager had written to the officer of the employment exchange, Kural on 22-10-86 (Exhibit-24/1). He had narrated the facts and informed that Adam is the most suitable candidate and he is worked for more than 155 days and he is also registered his name in the employment exchange. He therefore submitted that his name may be sponsored to the bank. He reiterated that point in this another letter dated

10-11-86 (Ex-24/2). The Branch Manager also informed this fact to their Regional Office. The Regional Manager by his letter dated 14-11-86 (Exhibit-24/3) informed the manager that the officer of the employment exchange is not ready to consider his request and there are other candidates who have registered their names prior to Adam are to be considered first. The list of candidates sponsored by the employment exchange was then send to him. At Exhibit-24/4 there is a letter of the District Employment Officer to the Branch Manager dated 26-11-86. It deals with the appointment of sweeper. He had specifically mentioned that the branch cannot continue the services of Adam unless his name is recommended by employment exchange. He requested the Branch Manager to give appointment to any one of the three candidates who were sponsored by him and he had also discussed with the qualifications required for the sweeper. It appears that after receipt of this letter Adam was discontinued. In other words the Branch Manager thought it fit that the letter of the Employment Exchange is to be complied with and the provisions of the employment exchange compulsory notification of vacancies Act, 1959 has application.

13. It is pertinent to note that the two witnesses who deposed before the Tribunal categorically stated that those three persons were not ready to accept the post and therefore Adam who was ready to do the job was given the appointment. There is no other documentary or oral evidence on behalf of the management to deny this position. Under such circumstances the appointment of these person was impossible.

14. Mr. Karmar, the Learned Representative for the workman placed reliance on D. Venkat Rao and Ors. Vs. Principal D. A. Government Polytechnic, Ongole and Ors. Writ Petition No. 2615 of 1989 reported in I CLR 1991, 25 wherein his Lordships have observed for the purpose of appointment of unskilled posts employment exchange Act is not applicable. In Ferozpur Central Cooperative Bank Limited Vs. Presiding Officer, Labour Court, Batinda of India Banking Law Journal 1984 Vol. I, pg. 18 Their Lordships have observed that Employment Exchange compulsory Notification of Vacancies Act of 1959, Section 3(d) would not apply to the vacancies of peons and unskilled worker. It is not in dispute the nature of the job which was carried out by Adam is of an unskilled type. What he was doing was sweeping. There is nothing on the record to show that any skill is required for the work which is done by him.

15. It is pertinent to note that such a situation arose in the Bank of Maharashtra at New Delhi. There the Presiding Officer, Central Government Industrial Tribunal gave decision in favour of the workman. There is nothing on the record to show that it was not implemented.

16. It can be further seen that the bank had issued circulars dated 8-12-78 (Ex-20/1), 16-8-79 (Ex-20/2) and 17-7-80 (Exhibit-20/3) relating to appointment of sub-staff through employment exchange. It has to be said that there are the guide lines for appointment. Any appointment contrary to it cannot be said to be illegal. At the most the bank may think it proper to take any suitable action against the officers who committed the breach of these circulars but why the person who is appointed can be said to be not eligible for getting the posting if he fulfills other eligibility required for the post. Here in the case of Adam from the letters of the branch manager and the region office it appears that he is a suitable candidate. They found him to be most satisfactorily doing his job. I rely upon the ratio given in those authorities for coming to the conclusion that terminating the services of Adam in view of the letter of the officer of the employment exchange is not proper and the provisions of the employment exchange compulsory notification of Vacancies Act of 1959 had no application to the post of sweeper in the bank.

17. It is not in dispute that when Adam was removed from service he was not given any notice or any compensation. In Laxmi Ram Bhora and Anr. Vs. Assam State Electricity Board 1984 LAB IC 110 Their Lordships have observed that termination of service of temporary employee without notice on the ground of non-registration of the name at the legal employment exchange held that order of termination mean violating of Principles of Natural Justice and cannot be suspended. Herein the case before me even though

the workman's name was registered with the employment exchange it was after four days of his getting the employment of the bank for the reasons stated above I find that terminating the services of the workman without giving him prior notice is illegal.

18. It is clear from the appointment letter of the worker that it is not for a specific period. But from the testimony of the witness for the union and from the correspondence which I have referred above it is clear that Adam has been provisionally employed to fill the vacancy of the part time sweeper and he fits in the definition of a probationer. Since he fits as a probationer he gets the benefit of paragraph 496 of Shastri Award which says that a probationer after expiry of the period of six months should be deemed to have been confirmed unless their services are dispensed with on or before the expiry of the period of probation. Admittedly he has completed six months and his working was found to be satisfactory. Therefore he is deemed to be confirmed in the service of the bank. As it is to be treated that he is deemed to be confirmed in the bank while removing him the procedure contemplated under para-522 has to be made applicable. No such notice was given to him before termination. In the place of Adam somebody else is appointed. The post is still there. Under such circumstances the termination of the workman amounts to retrenchment. There is no compliance of the provisions as contemplated under section 25F of the Act.

19. It is tried to submit on behalf of the management that the case of Adam falls under the definition of Section 2(f)(ii) of the Industrial Disputes Act of 1947. For the reasons stated above his case does not fall under the exceptions. I therefore find that there is no substance in the arguments advanced on behalf of the management. For all these reasons I record my findings on the issues accordingly and pass the following order.

#### ORDER

1. The action of the management of Bank of Maharashtra in terminating the services of Shri Sanjay Ramchandra Adam is not justified.
2. The management is directed to reinstate Adam at its original position and pay him all back wages and treat him to be in continuous service.
3. The management is also directed to pay him all other monetary benefits.

S. B. PANSE, Presiding Officer

नई दिल्ली, 4 जून, 1997

का. आ. 1638 — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के प्रत्युत्तर में, केन्द्रीय सरकार नेशनल इंश्यूरेन्स कं. लि. के प्रबन्धतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अम्बिध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-6-97 को प्राप्त हुआ था।

[संख्या पान-17012/32/95—प्राइवेट आर (बी-II)]

सनातन, वैस्त्रक अधिकारी

New Delhi, the 4th June, 1997

S.O. 1638.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial

Tribunal, Kanpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of National Insurance Co. Ltd. and their workmen, which was received by the Central Government on 2-6-97.

[No. L-17012/32/95 IR(B-II)]

SANATAN, Desk Officer.

#### ANNEXURE

Before Shri B. K. Srivastava Presiding Officer Central Government Industrial Tribunal Cum Labour Court Deoki Palace Road Pandu Nagar Kanpur.

Kanpur

Industrial Dispute No. 66 of 1996

In the matter of Dispute between :

Divisional Manager

National Insurance Co. Ltd.,

14, Station Road

Sitapur

AND

Dalchand

Village Nardawal

Post Fardhan Distt. Lakhimpurkheri (U.P.)

Ex Party Award

1. Central Government Ministry of Labour New Delhi vide its Notification No. L-17012/32/95-I.R. (B-2) dated 17-7-96 has referred the following dispute for adjudication to this Tribunal :

Whether the action of the management of National Insurance Co. Ltd., Sitapur in terminating the services of Shri Dal Chand, Sub-Staff w.e.f. 1-7-1984 is legal and justified? If not, to what relief is the said workman entitled?

2. The case of the concerned workman Dal Chand is that he was appointed as peon/sub-staff on 13-4-83 by the opposite party National Insurance Company and was paid Rs. 8/- per day as wages. He continuously worked upto 30-6-84 when in breach of Section 25F I.D. Act his services were terminated without paying notice pay and retrenchment compensation. Hence his termination is bad in law. Apart from this there has been breach of Section 25G and H I.D. Act.

3. The opposite party has filed to put in appearance in spite of sufficient service.

4. In support of his case the concerned workman Dal Chand WW-1 has examined himself besides he has file exhibit W-1 to W-33 papers. From this unrebutted evidence the case of the concerned workman is proved. Hence my award is that termination of concerned workman is bad in law and he is entitled for reinstatement with back wages.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 4 जून, 1997

का. धा. 1639.—ओरोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नेशनल इंश्यूरेन्स कं. लि. के प्रबन्ध-तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओरोगिक विवाद में केन्द्रीय सरकार ओरोगिक प्रधिकरण कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार द्वारा 2-6-97 को प्राप्त हुआ था।

[संख्या एस-17012/36/92—ग्राही भार (बो-II)]  
मनातन, डैस्क अधिकारी

New Delhi, thet 4th June, 1997

S.O. 1639.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of National Insurance Co. Ltd. and their workmen, which was received by the Central Government on 2-6-97.

[No. L-17012/36/92 IR(B-II)]  
SANATAN, Desk Officer.

#### ANNEXURE

BEFORE SHRI B. K. SRIVASTAVA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DEOKI PALACE ROAD, PANDU NAGAR, KANPUR

Industrial Dispute No. 140 of 1992

In the matter of dispute :

#### BETWEEN

Senior Divisional Manager,  
National Insurance Co. Ltd.,  
Divisional Office,  
25-M. G. Marg.  
Allahabad.

AND

Anant Ram Saxena,  
C/o Late Shri Badri Prasad Saxena  
118, Bhusali Tola,  
Khuldabad,  
Allahabad.

#### AWARD

1. Central Government Ministry of Labour, New Delhi vide its Notification No. D-17012/36/92 dated 2-12-92 has referred the following dispute for adjudication to this Tribunal :

Whether the action of the management of Regional Manager, National Insurance Co. Ltd., Allahabad in removing Shri Anant Ram Saxena, S/o Late Sh. Badri Prasad Saxena, Inspector, Gr. II from service vide order dated 4-6-86 just and legal ? If not, to what relief is the workman entitled to ?

2. The concerned workman Anant Ram Saxena was Inspector Gr. II with the opposite party National Insurance. He was posted at Allahabad at the relevant time. He was served with chargesheet dated 17-12-82 the copy of which is attached as Annexure I. The concerned workman submitted his reply which was not found satisfactory. After completing enquiry, the enquiry officer submitted his report on 14-4-86 holding that all the charges were proved. On the basis of his report the concerned workman was removed from service by order dated 4-6-86. Feeling aggrieved, the concerned workman has raised an industrial dispute. In the claim statement, interalia, it has been alleged that enquiry was not fairly and properly held. This fact was denied by the opposite party.

3. On the pleadings of the parties a preliminary issue regarding fairness and propriety of domestic enquiry was framed. This tribunal vide finding dated 7-11-96 held that enquiry was fairly and properly held. There after the management was given opportunity to prove the misconduct on merits. For this purpose 4-12-96, 21-1-97, 21-2-97 and 26-2-97 was given to the management but they failed to adduce any evidence to prove misconduct of chargesheet. Ultimately they were debarred from giving evidence on 26-3-97 and arguments were heard on 28-4-97.

4. The burden of proof the misconduct as given in the chargesheet rests with the management. As the management has failed to adduce evidence, obviously the charges have not been proved. Consequently the orders of removal from service of the concerned workman dated 4-6-86 is bad in law. It is held accordingly. The concerned workman will be entitled for reinstatement in service with back wages from the date of reference because of belated claim. I award accordingly.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 30 मई, 1997

का. धा. 1640.—ओरोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार द्वारा सी ग्राही के प्रबन्ध-तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओरोगिक विवाद में केन्द्रीय सरकार ओरोगिक प्रधिकरण, नई दिल्ली के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार द्वारा 27-5-97 को प्राप्त हुआ था।

[म. एस.-42012/50/88-डी-2 (वी) वी IV (वी)]

एस. रविश अली, डैस्क अधिकारी

New Delhi, the 30th May, 1997

S.O. 1640.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of F.C.I. and their workman, which was received by the Central Government on 27-5-1997.

[No. L-42012/50/88-D.II (B)/D.IV (B)]

S. RAVISH AJJ, Desk Officer

#### ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NEW DELHI

I. D. No. 126/88

In the matter of dispute :

#### BETWEEN

Shri Daya Chand S/o Shri Sagwa,  
Village Samaspur. District Gurgaon,

Versus

District Manager, Food Corporation of India,  
D.L.F. Colony, C-4. Gurgaon.

#### APPEARANCES :

Shri Prem Behari Lal Advocate—for the Management.  
Shri M. S. Nagar—for the workman.

#### AWARD

The Central Government of India in the Ministry of Labour vide its Order No. L-42012/50/88-D.II (B)/D.IV (B) dated 7-11-1988 has referred the following industrial dispute to this Tribunal for adjudication :—

"Whether the action of the management of Food Corporation of India in relation to District Manager, FCI, Gurgaon, in terminating the services of Shri Daya Chand, S/o Shri Sagwa, Part-time Sweeper w.e.f. 12-10-87, is just, fair and legal ? If not, to what relief the workman concerned is entitled ?"

2. The concerned workman was posted as part-time sweeper in the District Office of FCI at Gurgaon. His services were terminated w.e.f. 12-10-87.

3. Consequent upon a settlement dated 13-10-86 entered into between the concerned workman and the Food Corporation of India, Gurgaon before the Asstt. Labour Commissioner (Central), Chandigarh, the concerned workman was engaged as part-time sweeper w.e.f. 14-10-86 initially for a period of one year. It was also provided in the settlement that the concerned workman would be entitled to all benefits as are admissible to the regular employee of the FCI on completion of one year of satisfactory services. However, his services were terminated w.e.f. 12-10-87. Aggrieved with this action of the management that the concerned workman has raised the present dispute alleging that the action of the management is arbitrary, illegal and unjustified. Management has denied the allegations.

4. The case of the management is that as per the terms of agreement arrived at before the Conciliation Officer on 13-10-1986, the concerned workman was appointed as a part-time sweeper in District Office of F.C.I. at Gurgaon for one year since 14-10-1986. After expiry of one year, his contract of service was not renewed and he was discharged from service w.e.f. 12-10-86.

5. The Management have filed one document and have examined Shri M. L. Jain, District Manager, Food Corporation of India, Gurgaon, as MW-1/1.

6. The concerned workman has filed 4 documents and has examined himself as MW-1/1.

7. I have heard the representatives of the management and the concerned workman, and have gone through the evidence on record.

1494 GI/97-5

8. In nutshell, the main issue rotates around the settlement dated 13-10-1986 entered into between parties before the Assistant Labour Commissioner (Central), Chandigarh, as a result of which concerned workman was employed on and from 14-10-86 initially for one year. The terms of the said settlement are as under :—

#### "TERMS OF SETTLEMENT"

- (i) That Shri Daya Chand shall be given appointment as part-time Sweeper on 50% of the wages as admissible to the regular Class IV employees of the FCI on initial appointment.
- (ii) That the appointment at the 1st instance shall be for one year and he will be governed by the rules and regulations of the Food Corporation of India.
- (iii) That the workman shall be given benefits of seniority from 5-12-85 and the workman shall not be entitled to any back wages for the period of unemployment after 5-12-85.
- (iv) That the workman shall work 4 hours daily, i.e., 2 hrs. in the morning and 2 hrs. in the evening as allotted by the District Manager, FCI, Gurgaon. He shall be entitled to all benefits as are admissible to the regular employees of the FCI on completion of one year of his satisfactory service.
- (v) Both the parties shall submit implementation report by 20th October, 1986, failing which settlement shall be deemed to be implemented.
- (vi) The workman shall be engaged from 14-6-86."

9. In the cross-examination of the concerned workman (WW-1/1), it is indicated that the concerned workman was caught in drunken condition by the District Manager on 22-5-87 and was handed over to Police. It is also indicated that the concerned workman was placed under suspension on 30-5-87. It is also indicated that a charge-sheet was issued to him. All these facts on record leads to the only conclusion that the actual reason of termination of the services of the concerned workman, was this episode. The management, instead of complying with the principles of natural justice, giving opportunity of being heard to the concerned workman by way of holding domestic enquiry into the charges, opted to dispense with the services of the concerned workman in the garb of non-renewal of service contract, which is punitive without opportunity of defence to the concerned workman.

10. From term No. (iv) of the aforementioned settlement, it is amply clear that the concerned workman shall be entitled to all benefits, as are admissible to the regular employees of the Food Corporation of India on completion of one year of his satisfactory service. The Management has failed to lead any evidence to the effect that the services of the concerned workman during 14-10-86 to 12-6-87 were not found satisfactory. On the contrary in the cross-examination of MW-1/1, it is revealed that the concerned workman had been charge-sheeted. Instead of holding domestic enquiry into the charges giving proper opportunity of defence to the concerned workman, his services had been dispensed with arbitrarily in the garb of non-renewal of service contract, which is against the principles of natural justice.

11. Hence, hold that the action of the management in terminating the services of Shri Daya Chand, the concerned workman w.e.f. 12-10-87 is neither just, nor fair, nor legal. As a result of which the concerned workman is held to be continuing in service from the date his services were so terminated with 50% back wages at the rate last drawn by him and other benefits, which would have accrued to him, had his services not been so terminated.

12. Award is given accordingly.

Dated : 8th April 1997

GANPATI SHARMA, Presiding Officer

नई विल्ली, 30 मई, 1997

का. आ. 1641—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस सी सी एल के प्रबन्धतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निश्चिट ओद्योगिक विवाद में ओद्योगिक अधिकारण, हैदराबाद के पंचाट को प्रकाशित करते हैं, जो केन्द्रीय सरकार को 27-5-97 को प्राप्त हुआ था।

[सं. एल-22012/163/95-आई आर (सी-II)]

एस. रविष अली, डैस्क अधिकारी

New Delhi, the 30th May, 1997

S.O. 1641.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of S.C.C. Ltd. and their workman, which was received by the Central Government on 27-5-1997.

[No. L-22012/163/95-IR (C-II)]  
S. RAVISH ALI, Desk Officer

#### ANNEXURE

#### BEFORE THE INDUSTRIAL TRIBUNAL-I AT HYDERABAD

##### PRESENT :

Sri V. V. Raghavan, B.A., LL.B., Industrial Tribunal-I.

Dated, the 6th day of February, 1997

Industrial Dispute No. 12 of 1996

#### BETWEEN

The Branch Secretary,  
Singareni Collieries Clerical Association,  
Ramakrishnapur-504301 .. Petitioner

#### AND

The General Manager,  
Singareni Collieries Company Limited,  
Ramakrishnapur-504301 .. Respondent

#### APPEARANCES :

Sri K. Vesudeva Reddy, Advocate—for the Petitioner.

Sri K. Srinivasa Murthy and G. Sudha, Advocates—for the Respondent.

#### AWARD

The Government of India, Ministry of Labour, New Delhi, by its Order No. L-22012/163/95-IR (C-II) dated 30-1-1996 made a reference to this Tribunal under Section 10(1)(d) and 2-A of Industrial Disputes Act, 1947 for adjudication of Industrial Dispute mentioned in its schedule which reads as follows :

"Whether the action of the management in denying to promote Sri G. Rajeswar Rao, to the post of Office Superintendent Incharge in Gr. 'A' w.e.f. 1-6-97 is legal and justified? If not what relief the workmen is entitled to?"

2. After receipt of the said reference, this Tribunal has issued notices to both the parties. The Advocate for the petitioner appeared and filed Vakalat. Subsequently the petitioner filed Claim Statement on 9-8-1996. Respondent did not appear before this Tribunal, though notice was served upon him. The Respondent was set ex parte. Subsequently the respondent filed a petition to set aside ex parte order and petition was allowed. The Respondent was given an opportunity to file a counter. On 6-2-1997 when the matter was called on, neither the petitioner nor his Advocate, nor the

concerned petitioner-union were present. It is understood that the petitioner is not interested in to dispute. Hence there is no option but to close the reference. Thus the reference is closed.

Given under my hand and the seal of this Tribunal, this the 6th day of February, 1997.

V. V. RAGHAVAN, Industrial Tribunal-I  
No oral or documentary evidence is adduced by both the parties.

नई विल्ली, 30 मई, 1997

का. आ. 1642—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस सी सी एल के प्रबन्धतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निश्चिट ओद्योगिक विवाद में ओद्योगिक अधिकारण हैदराबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27/5/97 को प्राप्त हुआ था।

[सं. एल-22012/179/95-आई आर (सी-II)]

एस. रविष अली, डैस्क अधिकारी

New Delhi, the 30th May, 1997

S.O. 1642.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of S.C.C. Ltd. and their workman, which was received by the Central Government on 27-5-1997.

[No. L-22012/179/95-IR (C-II)]  
S. RAVISH ALI, Desk Officer

#### ANNEXURE

#### BEFORE THE INDUSTRIAL TRIBUNAL-I AT HYDERABAD

##### PRESENT :

Sri V. V. Righavan, B.A., LL.B., Industrial Tribunal-I.  
Dated, the 7th day of January, 1997  
Industrial Dispute No. 94 of 1995

#### BETWEEN

The Secretary, Loya Boggu Gani  
Karmika Sangham (IFTU), Yellandu,  
Dist. Khammam .. Petitioner

#### AND

The General Manager (Personal),  
Singareni Collieries Company Limited,  
Yellandu, Khammam District .. Respondent

#### APPEARANCES :

Sri G. Vidya Sagar, Advocate—for the Petitioner.

Sri K. Srinivasa Murthy and G. Sudha, Advocates—for the Respondent.

#### AWARD

The Government of India, Ministry of Labour, New Delhi, made a reference to this Tribunal by its Order No. L-22012/179/95-IR (C-II) dated 6th November, 1995, under Section 10(1)(d) and 2-A of Industrial Dispute Act, 1947 for adjudication of industrial dispute mentioned in its schedule which reads as follows :

"Whether the action of the management in denying to promote S/Shri T. Rama Swamy and K. Thrimurthulu, General Mazdoors SSP, S.C. Cl. Yellandu area to the post of Drivers Cat. V in the year, 1995 is legal and justified ? If not, to what relief the concerned is entitled ?"

2. After receipt of the said reference, this Tribunal has issued notice to both the parties. Both parties have filed their Vakalats. Petitioner filed Claim Statement on 23-2-1996 and Counter has been filed by the Respondent on 16-4-1996. The matter was posted for enquiry. After several adjournments were granted, the General Secretary of the Union was examined as WW-1 on 5-11-1996 in part. Thereafter, the matter was posted for continuation of his evidence. On 7-1-1997 the Advocate for the petitioner filed a memo I.A. No 5/97 stating that the Respondent Management vide office Order dated 14-11-96 considered the case of the promotion of the workmen J. Rama Swamy and requested this Tribunal to close the I.D. as withdrawn. The memo is recorded and allowed.

3. In view of the above memo dated 7-1-97, this I. D. is closed as withdrawn by the petitioner.

Given under my hand and the seal of this Tribunal, this the 7th day of January, 1997.

V. V. RAGHAVAN, Industrial Tribunal-I

#### Appendix of Evidence

Witness Examined for the

Workmen/Petitioner :

WW-1—P. Krishna Reddy.

Witness Examined for the

Respondent/Management :

NIL

Documents marked on either sides

NIL

New Delhi, the 30th May, 1997

नई दिल्ली, 30 मई, 1997

का. आ. 1643—श्रोदोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एम सी एल के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट श्रोदोगिक विवाद में श्रोदोगिक अधिकारण भूतनेश्वर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 26/5/97 को प्राप्त हुआ था।

[स. एल.-22012/222/93-आई आर (सी-II)]

प.स. रविश अली, डैस्क अधिकारी

New Delhi, the 30th May, 1997

S.O. 1643.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Bhubaneswar as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M.C. Ltd. and their workman, which was received by the Central Government on 26-5-1997.

[No. L-22012/222/93-IR (C-II)]

S. RAVISH ALI, Desk Officer

#### ANNEXURE

INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR

PRESENT :

Sri M. R. Behra, O.S.J.S. (Sr. Branch).  
Presiding Officer, Industrial Tribunal, Orissa,  
Bhubaneswar.

Industrial Dispute Case No. 38 of 1993 (Central)

Bhubaneswar, the 16th May, 1997

#### BETWEEN

The management of Jagannath Area of Mahanadi Coalfields Ltd., P.O. Dera, Via, Talcher, Dist. Dhenkanal ..First Party-management

#### AND

Their workman Sri Darshan Singh, represented through Orissa Coalfields Labour Union (NFTU), At/P.O. Deulbera Colliery-759102, Dist. Dhenkanal ..Second Party-workman

#### APPEARANCES

Sri S. P. Gupta, Personnel Manager—for the First Party-Management.

Sri S. B. Mishra, President of the Union—for the Second Party-workman.

#### AWARD

The Government of India, in the Ministry of Labour, in exercise of power conferred upon them by clause (2) of sub-section (1) and sub-section (2-A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), have referred the following dispute for adjudication vide their Order No. L-22012/222/93-IR (C-II) dated 12-1-97 :

"Whether the action of the management of Jagannath Area of Mahanadi Coalfields Ltd., in redesignating Shri Darshan Singh, Shovel Operator as Mazdoor Category-I with effect from 4-12-91 and paying him the wages of that category is justified ? If not, to what relief the workman is entitled to ?"

2. The Orissa Coalfields Labour Union, Deulbera Colliery has filed the claim statement on the averment that :

Their workman Darshan Singh was employed under the first party-management with the designation of a Shovel Operator from 1-7-89 at Rs. 100.50 paise per day. While working so as Shovel Operator, said Darshan Singh met with an accident on 2-12-82 whereby he suffered injuries on his left shoulder joint and right lower limbs, and suffered permanent partial disablement affecting 37% loss of his earning capacity. But however, injured Darshan Singh unable to perform the duties of a Shovel Operator was allowed to work as a Spelter with effect from 6-7-85 with pay protection of a Shovel Operator.

On 4-12-91 Darshan Singh was redesignated/reverted as Mazdoor Category-I. On 18-4-92 Darshan Singh represented the General Manager of the first party-management that his pay be protected as that of a Shovel Operator, but the representation did not yield any result.

Darshan Singh is to be paid his differential wage from 4-12-91 till date (it is said that Darshan Singh was retired on 6-9-94).

3. The first party-management filed written statement on the averment that :

Darshan Singh worked as a Shovel Operator upto 3-12-91. He met with an accident on 2-12-82 while on duty. The medical board examined Darshan Singh and assessed the loss of earning capacity of Darshan Singh to 37% for the injuries on his left shoulder joint and right lower limbs, besides Darshan Singh was held to have incapacitated himself to work as a Shovel Operator. On 2-2-90 a Committee examined Darshan Singh and found him fit to work in Mazdoor Category I. Accordingly, Sri Singh was designated as Mazdoor Category-I vide Office Order No. PO/JNC/27/91/10819 dated 4-12-91. Darshan Singh as Mazdoor Category-I is being paid wage attached to that post. From 1984 to 3-12-91 Sri Singh has been paid excess wage which he was not supposed to get not having worked as a Shovel Operator.

4. On these rival contentions, the following issues have been framed.

#### ISSUES

(1) Whether the action of the management Jagannath Area of Mahanadi Coalfields Ltd., in redesignating Sri Darshan Singh, Shovel Operator as Mazdoor Category-I w.e.f. 4-12-91 and paying him wages of that category is justified?

(2) If not, to what relief the workman is entitled?

5. There is no dispute that Darshan Singh was initially working as a Shovel Operator and while so working suffered an accident on 2-12-82 which resulted 37% loss of his earning capacity, but however, received a compensation of Rs. 15,000 for that loss of his earning capacity under the workmen's Compensation Act. Darshan Singh was getting his wage as usual that of a Shovel Operator though he was working as a Spotter till 4-12-91. On 4-12-91 Darshan Singh was reverted/redesigned to the post of Mazdoor Category-I and was allowed to get the wage of a Mazdoor Category-I. Thus, the dispute which centers round in this case is that, whether the redesignation/reversion of Darshan Singh to the post of Mazdoor Category-I with his re-fixation of pay as that of a Mazdoor Category-I, is sustainable or not?

6. The dispute between the parties seem to have originated after emergence of Ext. C, wherein Darshan Singh has been redesigned as Mazdoor Category-I with immediate effect i.e. from 4-12-91 with the wages of Mazdoor Category-I. The management has placed reliance in A.I.R. 1964 Punjab Page 512 (Seva Singh Ladha Singh Vrs. Manager, Indian Hume Pipe Co. Ltd.) and contended that Darshan Singh could have been dismissed/discharged by the present employer, in that event Darshan Singh could not have been re-employed elsewhere, but Darshan Singh was given employment, so that Darshan Singh would be able to manage his earning capacity inspite of his disablement. Therefore Darshan Singh is not entitled for any other financial redress. The authorised representative of Dashan Singh repelled this contention and distinguished the fact of the case covered under citation by contending that the facts of the cited case has emerged on the scope of Section 4 (1)(c) (ii) of Workmen's Compensation Act, unconcerned with the provisions of Section 9-A of the Industrial Disputes Act and further contended that without a notice to the workman, the management could not have reverted Darshan Singh to the post of Mazdoor Category-I affecting the scale of pay of a Shovel Operator. The representative of the management led his contention that Section 9-A of the Industrial Disputes Act has concern with Schedule-IV of the Industrial Disputes Act, and, on a plain reading of Section 10(1)(d) of the Industrial Disputes Act, the Tribunal is devoid of to adjudicate the present dispute.

Courts have consistently observed that the Industrial Disputes Act is not exhaustive. On a plain reading of Section 10(1)(c) and 10(1)(d) of the Industrial Disputes Act, specific forum have not been categorised to adjudicate the dispute concerning Schedule IV. Therefore when incidental matters covered under Schedule IV is to be encountered, the Tribunal can not by-pass or overlook the subject of dispute on mere technicalities. On that view of the matter, this Tribunal can not be said to be out of jurisdiction to decide the issues relating to Section 9-A of the Industrial Disputes Act.

7. Infact there is no denial to the fact that Darshan Singh was not appointed as a "Shovel Operator" and was not getting the pay of a Shovel Operator till the origin of Ext. C. It is a fact that the management has not elicited any material that Darshan Singh was issued with a notice under Section 9-A of the Industrial Disputes Act informing him about etc. change of his service conditions. Ext. C infact changed the cadre and pay of Darshan Singh. This Tribunal is of the view that notice under Section 9-A of the Industrial Disputes Act not having been issued to Darshan Singh, the reversion of Darshan Singh as Mazdoor Category-I can not be sustained. Industrial Dispute Act is a special Act. The contemplation of the special Act have overriding effect. The special Act is to prevail on all general Acts. The case covered under the cited case has no reference to the contemplation of Section 9-A of the Industrial Disputes Act. Therefore this citation is distinguishable and is not applicable to the present case.

Thus, the non-service of notice under Section 9-A of the Industrial Disputes Act to Darshan Singh, the reversion of Darshan Singh to the Mazdoor Category-I is not sustainable. Darshan Singh is required to be paid the difference of the wages between the Shovel Operator and Mazdoor Category-I from 4-12-91 till 6-9-94, the day of his retirement.

8. In the net reference is answered by the award that redesignation of Darshan Singh, Shovel Operator, as Mazdoor Category I with effect from 4-12-91 with reduction of his wage from 4-12-91 is not justified, therefore, Darshan Singh is entitled to the difference of the wage of Shovel Operator and Mazdoor Category I from 4-12-91 to the date of his retirement, as back wages.

Thus, the reference is answered in term of award as aforesaid.

M. R. BEHERA, Presiding Officer

नई दिल्ली, 30 मई, 1997

का. आ. 1644.—प्रौद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्र सरकार डअल्यू सी एल के प्रबंधनतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट प्रौद्योगिक विवाद में केन्द्रीय सरकार प्रौद्योगिक अधिकरण सम्बद्ध नं. 2 के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 26/5/97 को प्राप्त हुआ था।

[सं. एल/22012/226/92/ग्राइंड आर (सी [II])]

एस. रविष अली, ऐस्क अधिकारी

New Delhi, the 30th May, 1997

S.O. 1644.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Mumbai No. 2, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of W.C. Ltd. and their workman, which was received by the Central Government on 26-5-97.

[No. L-22012/226/92-IR C-II]  
S. RAVISH ALI, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

#### PRESENT :

Shri S. B. Panse, Presiding Officer  
Reference No. CGIT-2/68 of 1992

Employers in relation to the Management of Taroda Sub-Area of W.C. Ltd.,

AND

Their Workmen

#### APPEARANCES :

For the Employer—Shri B. N. Prasad, Advocate.

For the Workmen—Shri G. V. R. Sarma, Representative.

Mumbai, dated 2nd May, 1997

#### AWARD

The Government of India, Ministry of Labour by its order No. L-22012/226/92-IR(C-II), dt'd. 10-12-92, had referred to the following Industrial Dispute for adjudication :

"Whether Shri K. P. S. Nair and other 12 workers (list enclosed) working in the Canteen through the contractor are entitled for absorption by the Sub Area

Manager, Taroda Opencast, W.C. Ltd., Dist. Yeotmal, after working from March 1989 ? If not, to what relief they are entitled to?"

2. The Secretary of Rashtriya Koya Khadan Mazdoor Sangh (INTUC) have filed a statement of claim at Exhibit-2. It is contended that Taroda open cast coal mine is one of the mines owned and managed by National Coal Limited. As per the Mines Rules of 1955 there should be a canteen and a provision for the staff. Taroda opencast mine was started in the year 1987 which is to provide the canteen for the employees working there. It is therefore it appointed a contractor by name Sasidharan Nair to run the canteen by an order dated 16-3-89 on different conditions. The contractor then engaged thirteen workmen who are shown in the schedule from March 1989. Their wages were paid every month in the presence of the welfare officer of Taroda Opencast Coal Mine. It is submitted that Contract Labour (Regulation and Violation Act) of 1947 does not permit employment of persons through contractor in the canteen of mine. Thus it is not a permitted category of the work under the Act. Running of a canteen by the management of the mines is a welfare activity and it is compulsory on the part of the management to do so.

3. The National Coal Wage Agreement-4 is the Bi-partite Agreement between the employer and the trade union which was signed on 27-2-89 and came into effect from 1-1-87. Paragraph-8, 9 of Chapter-VIII of that agreement deals with establishment of the canteen. It prohibits of running the canteen through contractors. It is averred that the price of the items are fixed by the management and there is supervision of the management in respect of the canteen.

4. It is submitted that M/s. W.C. Ltd. having canteens has other mines which are run departmentally and not through the contractors. It is therefore submitted that the action of the management of running the canteen at Taroda Open-cast coal mine through a contractor and by engaging contract labourers is unfair and discriminatory.

5. The union pleaded that in the Bi-partite settlement it was agreed to absorb persons who are engaged on a permanent and peripheral nature of the jobs which is made applicable, making cutting of wood in saw mills of W.C. Ltd. The management had settled that issue and now on its basis they should also absorb these canteen worker who are doing the job of a permanent and peripheral nature. It is submitted that the management should pay these employees like other employees of W.C. Ltd., on the basis of NCWA-IVth. It is submitted that these employees are not paid properly. It is prayed that under such circumstances the reference may be answered in favour of the union and the employer M/s. W.C. Ltd. Taroda opencast now known as Neeljay (I) coal mine may be directed to absorb them with all monetary reliefs.

6. The management resisted the claim by the Written Statement Exhibit-3. It is submitted that there is no relationship of employer and employee between these worker and the management. It is submitted that the dispute which is tried to be raised is hit by principles of estoppel. It is averred that after establishing the Taroda Opencast mine, Yavatmal it was observed that it being a new project it was not feasible to provide all amenities and facilities to the employees working on that project full scale at initial stage. Sometime is always required to achieve normalcy in new projects. The employees were not having canteen facility there and were finding it difficult. Therefore, there was a joint meeting between different unions working there alongwith the management and it was decided that as the canteen cannot be run departmentally at that stage it should be given on a contract for one year to one Mr. Nair. It is averred that the union who raised the dispute was also party to the said agreement. It is submitted that as per the terms of the agreement the contract was given to Nair who engaged the employees shown in the schedule and they had no concern with the management. Under such circumstances the demand of the union is unfair. Therefore it is hit by Principles of Estoppel.

7. The management pleaded that there is no violation of Mines Rule as contended by the union. It is submitted that the reference is vague as it does not specify the job

and the post in which the employees were working. It is denied that the management had a legal and statutory obligation under Mines Act of 1952/Mines Rules, 1955 to run the canteen departmentally. It is denied that there is a violation of National Coal wage agreement No. VI by the management and it has to face the consequences. It is denied that the management had committed any illegality as alleged by the union. It is therefore submitted that the reference may be answered in favour of the management.

8. The union filed a rejoinder at Exhibit-4. It reiterated its stand which is taken in the statement of claim.

9. The issues are framed at Exhibit-5. The issues and my findings there on are as follows :—

Issues	Findings
1. Whether it is proved that there is no relationship of employer and employee between the parties ?	Yes.
2. Whether it is proved that the principles of estoppel is applicable in the present reference ?	Yes.
3. Whether Shri K. P. S. Nair, and 12 workers working in the Canteen through Contractor are entitled to absorption by the Sub-Area Manager, Taroda Open cast WCL, Dist. Yeotmal after working from March, 1989 ?	Yes.
4. If not, to what relief they are entitled to	Not entitled to any relief.

#### REASONS

10. G.V.R. Sharma (Exhibit-20), Secretary of the union lead oral evidence on behalf of the union. The employees shown in the schedule did not enter in to the witness box. So far as the management is concerned R. Rajashekaran (Exhibit-13) Dy. Chief Manager at the relevant time at Taroda Opencast coal mine and B. R. Dashrathi (Exhibit-34) the Manager at the relevant time lead oral evidence. They relied on different documents filed on the record to substantiate their claim.

11. It cannot be said to be in dispute that Taroda Open-cast mine (now named as Neeljay-I) was started in the beginning of the year 1988. Rajashekaran was the project officer/Sub-Area manager of it. It is common knowledge that when such a project is started at the initial stage the project working and living conditions are not normal and most of the facilities and amenities cannot be provided at initial stage. They were given it a phase by phase.

12. Rajashekaran (Exhibit-13) affirmed that the workers were facing difficulties in getting their food, tea and snacks as they were going to attend their duties from a distance place for want of housing accommodation at the project. There was a general demand for the arrangement of tea, arrangement of meals, tea and snacks etc. Infact as per the version of Rajashekaran there was no statutory obligation to start the canteen forth with. It is therefore, the committee was constituted by order dated 28-12-88 for resolving the dispute (Ex-29/1). In that meeting the representative of the concerned union were present. They were sent by the union and the letters are at Exhibit-29/2&3. In that meeting it was agreed (Exhibit-34) to give that canteen on a contract to one Mr. Nair for a period of one year. The concerned union is signatory to it. Accordinging an order (Exhibit-6/2) dated 16-3-89 was issued to Mr. Nair to run the canteen. He started the canteen on 1-4-89 and later on an order dated 15-12-91 (Exhibit-26) was issued to him to stop the functioning of the canteen. I may mention it here that as per the terms of the agreement as agreed by that committee the contract was to lapse after one year that is in March, 1990. But it appears that the contractor continued to be in possession of that canteen till December 15, 1991. Thereafter the canteen was given to a co-operative society and later on from August, 1994 it started functioning departmentally. It is not in dispute that the employees mentioned in the schedule were appointed by

the contractor Nair and not by the management of Taroda Opencast mine or the canteen committee. In other words there is no relationship of employer and employee between the management and these workmen.

13. From the cross-examination of Rajashekaran it is tried to bring on the record that when Nair was there the officials of the management used to see the worker working in the canteen were paid properly. The prices of the food articles in the canteen were fixed by it. The facilities such as utensils, fire fuel and the canteen premises were given by the management to the contractor. This is not at all in dispute. But even then the fact remains that these workmen were employed by Nair and not by the management.

14. I have already observed above that the union has send two letters namely dated 29-1-89 and 2-2-89 which are along with Exhibit-29, to the management stating that Aditya Mohan and Surendran will represent them in and the committee for taking decision for running the canteen at Taroda. They agreed for the appointment of Nair the contractor to run the canteen for a period of one year on certain terms and conditions. It is argued on behalf of the management that when it was decided to give the canteen to a co-operative society, then the present union raised a dispute which is illegal. I find substance in it. Because time and again the objection which was raised by the union is that giving of the canteen to a contractor on a contract basis is an illegality. In other words it can be said that the union is a party to that illegality and now it wants that the workers employed by the contractor be absorbed in the company as their regular employees. That cannot be permitted at all. It also hit the normal principles of Industrial relations. Once parties that is the union and the management agreed on a particular point then they should not be allowed to take back their words. If that is done then there should not be an Industrial peace at all. It is therefore rightly argued on behalf of the management that the claim which is made by the union is hit by principles of estoppel.

15. Mr. Sharma, the Learned Representative of the workman in his written argument (Exhibit-38) and through the statement of claim also tried to submit that the action of the management in giving the canteen on contract is contrary to National Coal wage agreement IV and V. Mr. Prasad, the Learned Advocate for the management in his written argument Exhibit-37 and in the written statement also tried to submit that the submissions which are made regarding the National Wage Agreement are baseless. I find substance in his submissions. It is because the National Coal Agreement-IV was signed on 27-7-89. No doubt it came into effect from an earlier date. But the canteen at Taroda was assigned to the contractor by an order dated 16-3-89 that is much before the signing of the National Coal Wage agreement No. IV. Therefore the management of Taroda could not have foreseen as to what was going to be provided in the same agreement in future. It is rightly submitted that therefore they cannot be blamed for committing any alleged breach. It can be further seen that the witnesses for the management did not say that the contract was renewed after the period one year that is after coming into existence of NCWA-IV. On the contrary the management in the initial stage had given the canteen to the co-operative societies by issuing a letter to the contractor that he should stop working there which is dated 15-12-91. It is obviously as per the terms of NCWA. If they had any intention to flout that agreement they would have continued that contract. They had not done so. Again so far as the contention taken by the union in respect of NCWA-V has no relevancy to the present set of facts.

16. The Learned Representative of the union Mr. Sharma strongly placed reliance on Rule-63 of Mines Rules of 1955. It reads "Provision of Canteens (1) At every mine where more than 250 persons are ordinarily employed if the Chief Inspector or an Inspector so required, there shall be provided and maintained in or adjacent to the precinct of the Mine

a canteen for the use of all persons employed. Provided that where the conditions at any mine so required, the Chief Inspector or an Inspector may direct other suitable arrangements approved by law for serving food, drink and other items to the persons employed be provided, and maintained in addition to the canteen required under this sub-rule." In other words as per this rule there should be more than 250 workers in the Mine and there should be a direction (instructions) from the Chief Inspector or Inspector to lodge the canteen. Admittedly at Taroda there were more than 250 employees working. It is alleged that so far as the instruction from the Chief Inspector is concerned the management witnessed denied the same. The union had produced a typed copy of extract of a circular No. 21 of 1961 issued by the Director General of Mines (Safety) regarding management canteen (Exhibit-31/15). It is tried to argue on behalf of the management that there are many discrepancies in this circular and therefore should not be relied upon. Basically it can be seen that it is mentioned in the circular that the Government of India was informed that at some mines canteens are run by contractors which are contrary to the provisions of Rule-68. Therefore the authority informed that his practice is contrary to Rule 68 of the Mines Rule-1955. Infact there cannot be any dispute over the proposition that the canteens cannot be run by contractors. But, so far as this particular case is concerned that the canteen at Taroda was given on contract only because to facilitate the employees at the initial stage. It was with the consent of the union. There was no intention of the management to flout any of the rules but to accommodate the employees can be seen. Through later actions namely giving the canteen to co-operative societies but when it was noticed that it is not workable then by running it departmentally, I therefore find that the reliance which is place by the union on Rule-64 of the mines rules is without any basis. The Learned Representative along with his written arguments had filed a list of authorities without producing its photo copy of the books cannot be relied upon. In other words those authorities cannot be said to be cited before me.

17. The representative of the union had tried to argue that in view of the Contract Labour (Regulation and Abolition) Act of 1917 the engagement of contract labour in Coal Mines is breach of the Act. For the above said discussion I find that this argument is without any merit and baseless. For all these reasons I record my findings on the issues accordingly and pass the following order :

#### ORDER

Shri K.P.S. Nair and other 12 workers shown in the list along with the schedule working in the canteen through the contractor are not entitled for absorption by the Sub-Area Manager, Taroda Opencast, W. C. Ltd., District Yeotmal, after working from March 1989.

S. D. PANSE, Presiding Officer

नई दिल्ली, 30 मई, 1997

का. आ. 1645—श्रीदोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स सी सी एल के प्रबंधतात्व के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुनंत्र में निर्दिष्ट श्रीदोगिक विवाद में केन्द्रीय सरकार श्रीदोगिक अधिकरण, धनबाद नं. 1 के प्रवाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 26/5/97 को प्राप्त हुआ था।

[सं. एन-24012/104/87/डी/4 (बी)]

एस. रविंश अली, डैस्ट्रिक्ट अधिकारी

New Delhi, the 30th May, 1997

S.O. 1645.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award

of the Central Government Industrial Tribunal, Dhanbad No. 1 as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. C.C. Ltd. and their workman, which was received by the Central Government on 26-5-97.

[No. L-24012/104/87-D.IV(B)]  
S. RAVISH ALI, Desk Officer  
ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD**

In the matter of a reference under Section 10(1)(d)(2A) of the Industrial Disputes Act, 1947.

Reference No. 56 of 1986

**PARTIES :**

Employers in relation to the management of Kedla North Colliery of M/s. C.C. Ltd.

AND  
Their Workmen

**PRESENT :**

Shri Tarkeshwar Prasad, Presiding Officer

**APPEARANCES :**

For the Employers—Shri R. S. Murthy, Advocate

For the Workmen—Shri J. P. Singh, Advocate.

STATE : Bihar

INDUSTRY : Coal

Dated, the 19th May, 1997

**AWARD**

By Order No. L-24012(104)/87-D.IV(B), dated 22-3-1988 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of the Management of Kedla North Colliery of M/s. C.C. Ltd., P.O. Kedla North, Dist. Hazaribagh in terminating the services of Sri Ramawtar Prasad Gupta, Asstt. Surveyor, is legal and justified ? If not, to what relief is the concerned workman entitled ?"

2. The workman and the sponsoring union have appeared and filed written statement stating therein that the workman, Rama Awatar Prasad Gupta was a permanent worker as Assistant Surveyor at Kedla North Colliery and he was joined prior to nationalisation in the said Colliery and also continued after nationalisation. It is said that on 11-1-78 he fell ill seriously and he gave information to the management and he got treatment at different

places and also used to inform the management about the same. After being fit to resume duty he reported for duty on 11th January, 1980 but he was not allowed and thereafter he made correspondences with the management that the action of the management was not justified, but he did not get any response and approached the union was not allowed and thereafter he made Officer in January, 1987. But after failure of conciliation it was sent to the Ministry and this reference has been made.

3. It is said that he was a permanent worker having continuous service of the colliery and the stoppage of work to the workman by the management after being declared fit medically the action of the management was illegal and unjustified which amounts to retrenchment simpliciter without following the provisions under Section 25-F of the Industrial Disputes Act and prayed that an award be passed accordingly for reinstatement of the workman with full back wages.

4. The management has appeared and filed written statement-cum-rejoinder stating, inter-alia, that the reference itself is not maintainable and the demand of the union is not justified and it should be rejected in view of authorities of the Hon'ble Supreme Court as given in Inder Singh & Sons Vs. Their Workmen (SCLJ-1-104) and Shalimar Works Ltd. Vs. Their Workmen (S.L.J-4-2228). It is further said that the concerned workman was Assistant Surveyor (Unqualified) since 1973 and in Kedla North Colliery there is no Certified Standing Orders and as such the Model Standing Order in Coal Mines as framed by the Central Government was applicable in this colliery and as per S.O. 17 of the said Standing Order continuous absence without permission and without satisfactory cause for more than ten days is misconduct for which the workman can be dismissed from service. It is said that the workman absented continuously from 11th January, 1978 without permission and without satisfactory cause for more than ten days and no information was given to the management and the latter waited patiently for his coming back and to resume duty, but after lapse of more than nine months he was issued charge-sheet dated 25th/26th October, 1978 which was sent by Registered Post with A.D. to his permanent address and even after management waited patiently for a long time for the workman to appear and give satisfactory explanation but he did not do so. Thereafter considering seriousness of the misconduct of the workman dismissal letter was issued by the management vide letter dated 19/22-2-79 which was sent to his address by Registered Post with A.D. Even thereafter the management did not hear of him till January, 1987. When the industrial dispute was raised before the Asstt. Labour Commissioner (Central), Hazaribagh and at that time the sponsoring union took false plea that the workman was ill.

5. It is further said that the management has got well established and well equipped dispensaries and hospitals with qualified Medical Officer and paramedical staff and free medical treatment is given in these dispensaries and hospitals and in serious cases were referred to Central Hospital at Nai Sarai or at Ranchi for treatment and entire treatment was free and serious illness workmen were carried to the hospital by Ambulance of the management and had the workman ill actually then there was no cause as to why he did not avail free medical treatment in the colliery hospital and it is said that this plea was false and the workman was engaged in some other work and after being failed in that work he returned to the management to resume his duty on the plea that he was ill. It is also said that the workman was not present nor whereabouts is known to the management, so it was not possible to hold regular domestic enquiry and in such circumstances considering serious misconduct of the workman he was dismissed from service and in support of this contention the authority of the Hon'ble Supreme Court as given in Ritz Theatres Pvt. Ltd. Vs. Its Workmen 1962(II) LLJ-498 and the Workmen of Motipur Sugar Factory (P) Ltd. Vs. Motipur Sugar Factory (P) Ltd. (1966-L.L.J. 162) has been referred and it is said that the management was ready to give evidence justifying dismissal of the workman before the Tribunal. It is finally said that the action of the management in terminating the service of the concerned workman was quite justified and the workman was not entitled for any relief and award be passed accordingly.

6. So far written statement of the workman is concerned the contention of the same has been denied parawise and specifically by the management by way of rejoinder and the same is said to be false, baseless, motivated and so denied. It is finally said that award be passed accordingly.

7. I further find that a rejoinder has also been filed by the workmen to the written statement of the management and the allegation made by the management in the written statement has been denied parawise and specifically and the same is said to be not correct and denied. Other contentions of the management have also been denied.

8. Now on the basis of pleadings of the parties the point for consideration in this reference is :

- (a) Whether the action of the management of Kedla North Colliery under C.C. Ltd. in terminating the services of Ramawtar Prasad Gupta, Asstt. Surveyor was legal and justified ?
- (b) If not, to what other relief or reliefs the workman was entitled ?"

9. Both the points being inter-linked are taken together for their consideration.

10. In support of its case the management has examined two witnesses, MW-1 Ram Kumar Pandey who was working in Kedla North Colliery as Clerk since 1973 and he knew the workman who was working as Asstt. Surveyor and proved the photo copy of the chargesheet given to the workman under signature of A. K. Singh, the then Manager of the colliery, marked Ext. M-1 and similarly he has further proved photo copy of dismissal letter issued to the workman dated 19/22-2-79 under signature of Sri K. S. Singh, Agent Project Officer of the colliery, marked Ext. M-2 and both these letters were sent by registered post and postal receipts marked Ext. M-3 and M-3/1, but could not say whether these letters were returned to the colliery office or not. He has also stated in cross-examination that at the relevant period of time he was working as Despatch Clerk and he maintained Despatch Register and had produced despatch register at the time of his evidence.

11. Similarly, MW-2, A. K. Singh was the then Manager of Kedla North Colliery during 1978-79 and has supported the case of the management as given in written statement and also identified the document Ext. M-1 which was also sent to the workman by registered post and this registered letter was not received by the management from the Post Office. He has also denied that the concerned workman reported for duty on 11-1-80 with medical certificate and he was not allowed to join there. He was posted at same from June, 1977 to September, 1983 and during his entire tenure the concerned workman did not turn up nor did report for duty nor did send any letter intimating about the reasons of his absence. He too has said that the colliery has got good dispensary and hospital with doctors and para-medical staff where treatment of the workmen are given free and serious cases are referred to Central Hospital, Ranchi and very serious cases are referred to Premier Hospitals at Jamshedpur, Delhi, Madras and Bokaro and treatment is given free of cost in all the hospitals to the workmen. However, he has said that no domestic enquiry was held in respect of the chargesheet issued to the workman and the workman was dismissed from service on the ground of misconduct of absent from duty without intimation and without reasonable cause. It is also said that the chargesheet was issued on the basis of report of Attendance Clerk in the Estt. Section and this report was put up before him and he himself issued the chargesheet and he was competent to issue such and the dismissal letter was issued by the Agent of the colliery as per provision under Mines Act. He has further clearly stated that as the workman was long absentee and he did not turn up in spite of issuance of chargesheet which was sent by registered post to his permanent address there was no other alternative but to terminate the service of the workman and accordingly such letter Ext. M-2 was issued in his name and the workman did not give any intimation to the management and the plea of illness was incorrect.

12. Similarly, two witnesses have been examined on behalf of the workmen who are WW-1, Ramji Ram Pal, who was Upper Division Clerk in Kedla Open Cast Project under CCL and in the year 1979 he was posted to Kedla North Colliery as Second Grade Clerk, and he was dealing with the matter relating to leave at that time, and the concerned workman was working as Asstt. Surveyor and used to come from Hazaribagh to report for duty and certificate submitted by the workman were received by him in the office of North Kedla Colliery under his signature, marked Ext. W-1 to Ext. W-15 and he had dealt with the application. In the year 1980, he was transferred from North Kedla Colliery but the application remained in the file of North Kedla colliery. He has further admitted that there was one case in this Tribunal against him number of which he did not remember and earlier he did not state this fact relating to leave application of this workman as spoken to-day. There was different sections of the colliery office and one of them was despatch and receipt section and clerical staff were posted to different sections as per Office Order, but he could not say as to by which Office Order he was posted as Leave Clerk. He has denied that he had not worked as Leave Clerk in Kedla North Colliery and at that time there was about 3100 workmen working in that colliery and he could not say as how many of them were piece-rated workmen or monthly rated workers. However, he has admitted that there was system for engaging separate clerk for separate categories of workmen. He has denied that ten leave clerks were working at that relevant time for dealing with leave matter but has admitted that there was four leave clerks dealing with leave matter at that time. He has further said that some of the leave applications submitted by the workman were received by post and some by hand and when it was received by post it ought to have been received in Despatch Section and there is nothing noted in the application Ext. W-1 series that these were even received in Despatch Section but has stated that these were delivered personally by hand to him by younger brother of the workman whose name he did not remember. He could not say that endorsement made on this application Ext. W-1 was written by him or not. He has admitted that any employee applying for sick leave, he has to submit medical certificate and C.C. Ltd. has got its own hospitals with doctor and in case of serious patients they are sent to Central Hospital at Gandhinagar and Vallore. He has further stated that the concerned workman has his house at Hazaribagh and from there he used to report for duty in the colliery. He has denied that these applications were fabricated one and he has come to depose evidence in collusion with the workmen. On being re-called he has stated that he was posted at Kedla North Colliery from 1-10-73 to 11-2-80 when he was transferred to Charhi Area. On this point he could not be cross-examined as none was present on behalf of the management.

13. WW-2 is the concerned workmen who has supported his case given in written statement and stated that he was seriously ill from 10-1-78 and he has given application in writing on 11-1-78 about his absence due to illness and thereafter he got treatment at Patna under Dr. B. Mukhopadhyaya and on his advice various examinations were made including X-ray and he was under his treatment till March, 1980. Thereafter he was given fitness certificate and he reported for duty at the colliery and produced certificate granted by Dr. Mukhopadhyaya. But he was asked to take fitness certificate from local doctor of the colliery but when he went to the doctor in March, 1980 he was advised to take rest for two months and thereafter again appeared and gave him fitness certificate and the said certificate was sent to the colliery. But when he reported for duty he was told that his services were terminated and he was asked by the colliery manager to represent before the General Manager, Dy. Director of Personnel and Director of Personnel etc. No chargesheet was given and he was not intimated that any departmental proceeding was initiated against him. He has produced photo copy of medical case history given by Dr. Mallick, junior to Dr. B. Mukhopadhyay, marked Ext. W-2 with objection. Photo copy of fitness certificate granted by Dr. Mukhopadhyay is Ext. W-3 with objection. Photo copy of X-ray report marked Ext. W-4 with objection and three photostat copies of prescriptions marked Exts. W-5 series with objection and photostat copy of information given to the management are marked Ext. W-6 series with objection and 8 postal receipts supporting the fact of sending applications through post, marked Ext. W-7 series with objection. All these were marked being objected by the management. He has further stated that he had suffered from same disease from 1977 which he suffered in 1978 also and he was treated by Dr. Mukhopadhyay and fitness certificate was given to him in the year 1980 and then he was referred to colliery doctor. He has further stated that at the time of drafting of written statement he has told all the matters to his lawyer and produced all these documents. He has admitted that employees of CCL were provided with free medical treatment and there was a dispensary at Kedla colliery but he did not know that seriously ailing patient is referred by the dispensary to the bigger hospitals, such as, Central Hospital and A.J.I.M.S., New Delhi and the workmen were provided free treatment. He also did not know the workman applying for sick leave has to attach medical certificate with his application and he can't say whether in such medical certificate the doctor indicates the period for which leave was necessary. He has admitted that during his treatment he did not file application asking for leave till he was finally fit. He has also stated that in the year 1980 he was referred to the colliery doctor, but no written order was given to him and he was no document that any such direction was given by the management

to report before the colliery doctor and there was also nothing to show that he handed over medical papers to the colliery doctor.

On Court Question he has stated that from January, 1978 to January 1980 he was under treatment of Dr. B. Mukhopadhyay at Patna for about two months and came back to his house at Hazaribagh and he used to visit there at some interval of month or two months and he used to be there for 7 to 10 days. He has further stated that Dr. Mukhopadhyay told him in the year 1980 that he was fit and he report for duty to the management in January, 1980. It was in writing but he was asked verbally to bring certificate which was issued in March, 1980. He has again stated that he did not immediately bring the fitness certificate from Dr. Mukhopadhyay as he told him (concerned workman) to take rest for some days and thereafter it was given. He has denied that Ex. W-1 series were written in one sitting and in one ink and he could not say as to who signed receipts of documents Ext. W-1 series. But he has denied that these documents were never given to the management and these were forged documents. He has also denied that Ext. W-3 to Ext. W-5 series are fake documents and that Exts. W-6 series and W-7 series were fake and fabricated documents and were written in one sitting. He has denied that he stated illegally that he reported for duty on the fitness certificate of Dr. Mukhopadhyay and that the colliery doctor never gave him any fitness certificate. He had denied that he received chargesheet and letter of termination earlier by post. He has further admitted that in the first week of January, 1978 he had applied for being given underground duty knowing fully well that underground duty is more arduous than surface duty. He has denied that he maintained the same health from the year 1977 to 1982. He has also denied that he was running a private medical shop at Hazaribagh and that was the reason for his long absence from duty. There is no other evidence on behalf of the parties.

14. Some documents have been filed and the management have produced photo copy of charge-sheet Ext. M-1, photo copy of reply to the charge-sheet, Ext. M-2 and postal receipts, Exts. M-3 and M-3|1.

15. Similarly, the workmen have produced original leave applications, Exts. W-1 to W-1|5 of different dates, photo copy of medical history sheet Ext. W-2, photo copy of fitness certificate Ext. W-3, photo copies of examination reports including X-ray report Exts. W-4 series, photo copies of prescriptions—Ext. W-5 series, photo copies of informations given to the management about illness—Ext. W-6 series and photo copy of postal receipts—Ext. W-7 series. The concerned workman, WW-2 stated specifically in course of his evidence on 28-2-95 that he would produce original of all these documents, but surprisingly,

original of these documents never been produced and even postal receipts Exts. W-7 series of giving information about his absence are all photostat documents and nothing has been mentioned thereafter on behalf of the workmen about the original and the same not been produced even been asked for in the Tribunal.

16. While arguing the case it has been submitted on behalf of the management that the concerned workman absented from 11-1-1978 onwards without permission and without showing any satisfactory cause for such absence and for that he was issued chargesheet in October, 1978 vide Ext. M-1 after waiting for about 9 months and was sent by registered post which did not come back to the management's office and the workman did not appear. Thereafter termination letter on the ground of misconduct was issued to the workman in February 1979 vide Ext. M-2 and it was also sent by registered post which did not come back and Exts. W-3 and W-3|1 are postal receipts. Even thereafter the workman did not turn up before the management and for the first time the dispute was raised before the A.L.C. (C), Hazaribagh in January, 1987. It is also pointed out that it has come in evidence of MW-1 and MW-2 and also admitted by WW-1 and WW-2 the concerned workman himself that there is well equipped hospitals at Kedla Central Hospital where the employees get free treatment in case of illness and in case of serious nature of disease they are also referred to high placed hospitals at Ranchi even A.I.I.M.S., New Delhi, Vellore where treatment is given free of cost. Why the concerned workman did not avail this facility given by the management has not been explained and it is said that he was under treatment of Dr. B. Mukhopadhyaya, Orthopaedy Specialist, Patna during the period for which he has filed Ext. W-3 which is said to be issued on 7-3-80 over-written as 8-3-80 without any initial and this fitness certificate is not on the letter head of self well renown doctor but on a piece of paper and on the left corner the name of the doctor is given therein. But corresponding documents showing prescription medicines given by the doctor and bill paid to the doctor and the receipts for purchase of medicines have not been produced by the workman. It is also surprising that he admitted that he was under treatment of said doctor till March, 1980 and when he went to take fitness certificate he was asked to take more rest and he was under treatment till June, 1980. In that case how it is possible that he appeared before the colliery manager or competent officer to resume his duty and he was asked to report to the colliery doctor and to take fitness certificate where he gave his medical papers and he was reported fit by the said doctor. These are self-contradictory in the documents and in the evidence of workmen which cast serious doubts on his case. It is further submitted that Exts. W-2 to W-7 series were produced in the

Court for the first time in January, 1994 whereas the management's evidence was closed in the year 1992 itself and all these documents are photo copies to which the workmen, WW-2 undertook in the course of evidence to produce the original or the same but they were never produced and marking of exhibits were objected on behalf of the management.

17. It is further pointed out that about Ext. W-1 series witness WW-1 has come to say that he had received these documents but usual receipt number being given on letters received in any Administrative office (Despatch Section) is not mentioned therein nor this WW-1 could say as to who gave these applications to him and the workman himself WW-2 has stated that he could not say who had made this endorsement receipt on these applications. Even then WW-1, the said clerk of the colliery has come forward to say that being leave clerk he had received these applications then question rightly been raised by the management that if these applications were received in the office of the colliery or produced by the concerned or WW-1 at the time of evidence and these were not called for from the management and these Ext. W-1 series are not original then these must have been in the office of the colliery and not with the workman in any case. As such, it is pointed out that all these documents are forged and fabricated and Ext. W-1 series were written in one sitting and one pen and in one ink and these are simply fabricated and forged documents. It is also submitted that Ext. W-3 fitness certificate of the workman (Photo copy) it is clear that the workman has claimed that he was seriously ill on 11-1-78 and under treatment at Patna, but as per this Ext. W-3 he was under treatment of Dr. Mukhopadhyay from 14-10-77 till 7-3-80 over written as 8-3-80. It is also pointed out that Ext. W-1 series so-called applications given by the workman the first application is dated 13-4-78 whereas the workman was absent from 11-1-78 and he has admitted that at the time of filing leave petition on sickness medical certificate is to be attached with the application, but no such medical certificate has been given with any applications, Ext. W-1 series and he has further admitted that he did not file any leave application of illness but has kept the management informed about his illness and filed petition accordingly. It is further said that the workman has claimed to be a permanent workman of the colliery from the time of the company and since nationalisation of the colliery in the year 1973 and he was literate workman being Asstt. Surveyor and this he has shown his ignorance that serious patients admitted for treatment in the colliery hospital are sent to outside big hospitals for treatment free of cost. This also is unbelievable that a workman like the concerned workman would be ignorance of this provision after working for so many years under the private company and also under present management of CCL after nationalisation.

18. It is also pointed out that WW-1 has stated in his examination-in-chief that he was posted in Kedia North colliery in the year 1979 and was transferred from there in the year 1980 then how he could have got these applications received which are for the year 1978. However, when he realised this mistake the witness was re-called on a date when the management's representative was not present and he was again examined-in-chief to say that he was posted in the said colliery from 1973 to 11-2-1980. It has been questioned rightly by the management that which statement of this WW-1 should be taken to be true and how the witness could give two contradictory dates of his posting in the colliery without any supporting document to this effect.

19. It is further submitted that both Exts. M-1 and M-2 were issued to the workmen by the management and sent by registered post, Ext. M-3 series and these were never returned to the management and it could have been well presumed that the chargesheet and termination letter were received by the workman and he had full knowledge of the same and in that case his plea that he went to join his duty on 11-1-1980 can't be relied upon. It is also pointed out that he has clearly admitted that he has got no paper to show that he reported for duty on 11-1-80 and he was asked to go with papers to the said doctor who reported to be fit for duty and sent the documents to the colliery office. All these are bundle of lies and real fact is that the workman being unqualified surveyor under private colliery and he was working under the management and thereafter he was running medical shop at Hazaribagh and after getting termination letter he filed case after long gap of 8 to 9 years just to get some benefit from the management on the plea of his ignorance of any chargesheet and termination letter being issued to him.

20. It is further submitted that as the workman did not turn up after service chargesheet to him and after waiting such a long period ultimately termination letter was issued to the workman in February, 1979 and as per authorities of the Hon'ble Supreme Court given in the case of Ritz Theatres Pvt. Ltd. case reported in 1962 (II) LLJ-498 and Motipur Sugar Factory (P) Ltd. case (1965-LLJ-162) the management has right to prove misconduct and justify its action of dismissal by producing fresh evidence and accordingly the management has produced MW-1 and MW-2 and documents Exts. M-1 to M-3 series to prove its case that the workman was fully knowledge for issuance of chargesheet to him and even then he did not turn up before the management for long without intimation or showing sufficient cause, the management had no other alternative but to issue termination letter after such long period and Exts. W-1 to W-7 series are false and concocted papers prepared by the workman only with a purpose for this case.

21. It is also submitted that this has come stale claim as the case has been filed before the ALC after such long period and these documents neither filed before the ALC nor these were filed in this reference although the workman, WW-2 has admitted that he had shown all these documents to his lawyer at the time of preparing written statement of this reference. So the plea can't be taken that he had any knowledge of these documents and these have been filed in the year 1994 after closure of the management's witness. So naturally these are false and fabricated documents which can't be relied upon. I find much force taken on behalf of the management.

22. On the other hand, it is submitted on behalf of the workman that actually he was taken serious ill from 11-1-78 and thereafter he was under treatment at Patna and he had sent application for leave to the management vide Ext. W-1 series. It is, therefore, pointed out that it can't be said that no intimation was given to the management about his illness and reason thereunder. It is further submitted that in hot haste the management issued chargesheet to the workman which was never served upon him nor domestic enquiry was held and workman was arbitrarily terminated from service without complying with the provision of Sec. 25-F of I.D. Act and this action of the management was void ab initio. It is further submitted that number of documents Exts. W-1 to W-7 series have been filed to show that he was actually under treatment of Dr. Mukhopadhyay at Patna and for that intimation was given to the colliery management and about the workman not getting treatment at colliery hospital at Kedla North Colliery, it is submitted that he thought that illness being serious he would not get proper treatment there and he chose to get treatment at Patna. It is also refuted that he had opened medical shop at Hazaribagh and for that he absented continuously for about two years without intimation and after getting the same being established and knowing fully well that he was chargesheeted and terminated he has made out this false case just to get remedy from the Tribunal. It is also submitted that the action of the management in terminating the service of permanent workman like present one it could not be justified in any way in the fact that no domestic enquiry was held nor any opportunity was given to the workman to clarify his case and without complying with the provision of Sec. 25-F of the I.D. Act he was arbitrarily and illegally terminated. As such, it is submitted that he is entitled for his reinstatement in the service from the date of his alleged termination i.e. February, 1979 with full back wages.

23. So far delay in raising the dispute is concerned it is submitted that when he turned up for joining duty on 11-1-1980 with medical fitness certificate from Dr. B. Mukhopadhyay he was asked verbally by the concerned officer to report

the colliery doctor to take medical fitness and he produced all papers before the said doctor who also gave him fitness certificate and it was sent to the management but thereafter he was told that he has been terminated and he represented the matter before the management on several occasions but nothing was done, then he moved to the sponsoring union and the matter was referred before the A.L.C. (C), Hazaribagh in January, 1987. As such, there is no delay in raising the dispute and it would be said to be stale claim.

24. However, I find that these contentions of the workman that he produced medical fitness certificate and for his joining on 11-1-1980 he was asked to go to the colliery doctor, the workman (WW-2) has admitted that he has no paper to show that actually he came to join duty on 11-1-1980 with medical fitness certificate and was asked to go to the colliery doctor and after getting medical fitness certificate it was sent to the management, but there is no chit of paper to substantiate this contention. Another vital point is that workman's contention that he made several representations to the management about his illegal termination, but no chit of paper in this regard has been filed in this reference although some photo copies Ext. W-2 to W-7 series were filed by the workman at belated stage in the year 1994. But there is nothing to show any such representation was given by him to the management about his reinstatement after February, 1980 and this can't be relied upon. So far other contradictory evidence and documents of the concerned workman those have been already discussed above. The workman absented from 11-1-1978 and as per his fitness certificate Ext. W-3 dated 7-3-1980 overwritten 8-3-1980 he was under treatment from 14-10-1977 whereas he was absenting from duty from 10-1-1978, so naturally even being ill and under treatment of the said doctor he was on duty till 9-1-1978. Not only this but on 3-1-1978 he had filed petition before the management for giving him underground duty from surface duty knowing fully well that underground duty is more arduous. As such there is no explanation that when he was ready to undertake unground duty from 1-1-1978 itself then how he became so serious ill from 10-1-78 so as to become absent from duty without any intimation to the colliery management. So far his contention of turn up for joining duty from 11-1-1980 also falsify in the light of Ext. W-3 which was issued to him on 7-3-1980 overwritten 8-3-1980 and not before that he could have turned up for duty with medical certificate. All these contradictory oral and documentary evidence of the workman and produced the documents Ext. W-2 to W-7 series at belated stage in the year 1994 after closing of evidence of the management his case became full of contradiction and falsified and the same can't be relied upon at all. On the other hand, there is evidence that chargesheet was

issued to the workman after waiting for about 9 months of his continuous absence, the same was sent to him by registered post vide Ext. M-3 series and that did not come back to the management and even thereafter awaiting for three months termination letter was issued to him in February, 1979 and that too was sent by registered post vide Ext. W-3/1 and that too did not come back to the management and in law it would be safely presumed that those letters were served to the workman on his permanent address available with the management and even then he did not turn up for his duty nor did he give any explanation to the management about his continuous illegal absence from duty which was misconduct of high degree under the Standing Order of the management. I also agree with the contention of the management as the workman did not turn up after issuance of chargesheet. So there was no alternative but to conduct domestic enquiry in his absence and accordingly he was terminated from service giving full opportunity to him to file his explanation which was never done by the workman and thereafter as per authorities referred above of the Hon'ble Supreme Court, the management has produced both oral and documentary evidence in this reference to prove its case to prove its stand of misconduct of the workman by being absent from duty for a long period without any permission or approval or showing any sufficient cause for the same. I further find that the workman was terminated in the year 1979 and for the first time the matter was raised under Industrial Disputes Act before the A.L.C. (C) in the year 1987 and there is nothing to show that any representation was filed before the management raised any dispute against the said termination and naturally it has become stale claim with influx of time for about 9 years and in this view of the matter also the workman is not entitled for any relief.

25. In the above circumstances, I find that the action of the management of Kedla North Colliery of M/s. C.C. Ltd. in terminating the services of the concerned workman was fully legal and justified and the workman is not entitled for any relief as claimed. Accordingly, both the points are decided against the workman.

#### 26. Hence, the Award—

The action of the management of Kedla North colliery of M/s. C.C. Ltd. in terminating the services of the concerned workman, Ramawtar Prasad Gupta, Asstt. Surveyor, was fully legal and justified and the workman is not entitled for any relief as claimed.

However, there will be no order so as to cost.  
**TARKESHWAR PRASAD, Presiding Officer.**

नई दिल्ली, 3 जून, 1997

का०आ० 1646.—ग्राम्योगिक विवाद अधिनियम, 1947 (1947 की भाग 17 के अनुसरण में, केन्द्रीय सरकार हैड व्हाटर्स यू.पी. परिया कॉन्ट्रान बरेली के प्रबंधतंत्र के संबंध निवाजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ग्राम्योगिक विवाद में केन्द्रीय सरकार ग्राम्योगिक अधिकरण, कानपुर के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार का 3/6/97 को प्राप्त हुआ था।

[स०.एल-14012/25/94-आई०आ००(दीयू)]  
क० वा० बी० उनी, डेस्क अधिकारी

New Delhi, the 3rd June, 1997

S.O. 1646.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Head Qtrs. U.P. Area Canteen, Bareilly, and their workman, which was received by the Central Government on 3-6-1997.

[No. L-14012/25/94-IR(DU)]  
K.V.B. UNNY, Desk Officer

#### ANNEXURE

BEFORE SHRI B. K. SRIVASTAVA, PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT,  
DEOKI PALACE ROAD, PANDU NAGAR,  
KANPUR

INDUSTRIAL DISPUTE NO. 148/95

In the matter of dispute :

#### BETWEEN

Km. Mini Chandran, D/o T. K. Chandran,  
149-A, Civil Lines, Mohan Bhawan, Opp.  
S.D.M.E.(E) Residence, Barailly.

#### AND

Managing Director, Head Quarter, U.P. Area  
Canteen, Bareilly.

#### AWARD

1. Central Government, Ministry of Labour, New Delhi vide its notification No. L-14012/25/94 dated 17/30-11-1995 has referred the following dispute for adjudication to this Tribunal :

Whether the action of the management of Head Quarters U.P. Area Canteen, Bareilly in terminating the services of Miss Mini Chandran Sale Girl w.e.f. 15-6-1992, is just and legal ? If not, to what relief the workman is entitled to ?

2. It is unnecessary to narrate the pleadings of parties, as after exchange of pleadings the concerned workman failed to adduce her evidence inspite of sufficient service. Hence, the reference is answered against the workman for want of prosecution and proof. The concerned workman will not be entitled for any relief.

**B. K. SRIVASTAVA, Presiding Officer**

नई दिल्ली, 3 जून, 1997

का०मा० 1647.—श्रीदोषिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार हैल क्वार्टर्स यू०पी एरिया कैट्टीन बरेली के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट श्रीदोषिक विवाद में केन्द्रीय सरकार श्रीदोषिक अधिकरण कानून, के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-6-97 को प्राप्त हुआ था।

[सं० एल-14012/26/94-आई-आर. (डीयू)]  
के० वी०बी० उन्नी, डेस्क अधिकारी

New Delhi, the 3rd June, 1997

S.O. 1647.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Head Qtrs. U.P. Area Canteen, Bareilly and their workman, which was received by the Central Government on 3-6-1997.

[No. L-14012/25/94-IR(DU)]  
K.V.B. UNNY, Desk Officer

#### ANNEXURE

BEFORE SHRI B. K. SRIVASTAVA, PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DEOKI PALACE ROAD, PANDU NAGAR, KANPUR

#### INDUSTRIAL DISPUTE NO. 147 OF 1995

In the matter of dispute :

#### BETWEEN

Km. Asha Chandran, D/o Shri T. K. Ramchandran, 149-A Civil Lines, Mohan Bhawan, Opp. S.D.M1(E) Residence, Bareilly.

#### AND

Managing Director, Head Quarter, U.P. Area Canteen, Bareilly.

#### AWARD

1. Central Government Ministry of Labour New Delhi vide its Notification No. L-14012/26/94-I.R.D.U. dated 17/30-11-1995 has referred the following dispute for adjudication to this Tribunal :

Whether the action of the management of Head Quarters U.P. Area Canteen, Bareilly in terminating the services of Miss Asha Chandran, Sale Giri w.e.f. 15-6-1992 is just and legal? If not, to what relief the workman is entitled to?

2. It is unnecessary to narrate the pleadings of parties, as after exchange of pleadings the concerned workman failed to adduce her evidence inspite of sufficient service. Hence, the reference is answered against the workman for want of prosecution and proof. The concerned workman will not be entitled for any relief.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 4 जून, 1997

का०मा० 1648.—श्रीदोषिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडिया मिन्ट मुम्बई, के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट श्रीदोषिक विवाद में केन्द्रीय सरकार श्रीदोषिक अधिकरण नं० 2, मुम्बई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार का 3-6-97 को प्राप्त हुआ था।

[सं० एल-16011/1/95 आई-आर(डीयू)]  
के० वी०बी० उन्नी, डेस्क अधिकारी

New Delhi, the 4th June, 1997

S.O. 1648.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, No. 2, Mumbai as shown in the Annexure, in the industrial dispute between the employers in relation to the management of India Government Mint, Bombay and their workman, which was received by the Central Government on 3-6-1997.

[No. L-16011/1/95-IR(DU)]  
K.V.B. UNNY, Desk Officer

#### ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II, MUMBAI  
PRESENT :

Shri S. B. PANSE, Presiding Officer.

REFERENCE NO. CGIT-2/40 OF 1996

Employers in relation to the management of India Government, Mint.

#### AND

Their workmen.

#### APPEARANCE :

For the employer : Mr. L. T. Satelkar, Advocate.

For the workmen : Mr. S. Natrajan, Advocate.

Mumbai, dated 9th May, 1997

#### AWARD

The Government of India, Ministry of Labour by its order No. L-16011/1/95-IR(DU), dated 26-8-96, had referred to the following Industrial Dispute for adjudication.

“Whether the action of the General Manager Mint, Bombay for not offering promotion in favour of Shri C. S. Nakhwa, is justified or not, What relief should be granted?”

2. The statement of claim is filed at Exhibit-2. It is contended that C. S. Nakhwa the workman was working as an Assistant Class-I in the mine. The next promotion is Assistant Mistry (Rolling). It is given on the basis of seniority subject to rejection of unfit. It is averred that for the post of Assistant Mistry senior most persons were called by the Officers. They were asked to arrange Labour distribution for a specified work and many of them if not all submitted proper arrangement. The officer approved the same. On 1-4-1993 the order of promotion was published

which had the name of L. K. Sawant who is junior to Nakhwa the worker.

3. It is pleaded that the workman has known for his efficiency and also belonged to the scheduled tribe. It is submitted that as per the rules Nakhwa should have been given promotion as per the rules of selection and on the basis of roster. It was not given to him. He therefore made a representation to the management which was replied without any merit. It is therefore, prayed that Nakhwa is entitled to promotion to Assistant Mistry in place of his junior L. K. Sawant with other reliefs.

4. The management resisted the claim by the Written Statement Exhibit-4. It is averred that the promotion from Assistant Class-I to Assistant Mistry was made on the basis of the seniority, assessment of quality of work, skill and the suitable trade tests prescribed to this effect. It is submitted that Assistant Class-I who failed to pass this trade test was considered unfit for promotion to the post of Assistant Mistry as per the existing rules for promotion of Industrial workers. It is averred that the workman did not fulfil the conditions, therefore, he could not be promoted. The management pleaded, that the Government orders regarding reservation for SC/ST are strictly followed. The reservation is done grade-wise of all departments and not department-wise. It is denied that the worker is entitled to be promoted on the basis of the roster for the above said post. It is prayed that there is no merit in the statement of claim and the reference may be answered in favour of the management.

5. The union filed a rejoinder at Exhibit-6 and reiterated its claim. It denied the contention taken by the management in the written statement.

6. The issues are framed at Exhibit-7. The issues and my findings thereon are as follows :

Issues	Findings
1. Whether the action of the General Manager, Mint Bombay for not offering promotion in favour of C. S. Nakhwa is justified or not ?	Action justified.
2. If not, what relief the workman is entitled to ?	Dotes not survive.

#### REASONS

7. C. S. Nakhwa (Exhibit-11) is admittedly the candidate of Scheduled Tribe. In the year 1992-93 he was working as Assistant Class-I but got the promotion of Assistant Mistry on 20-5-1996.

8. It is not in dispute that by diary order No. 3 dated 1-4-1993 the promotion was issued to certain posts in the Indian Government, Mint wherein L. K. Sawant from the post of Assistant Grade I was promoted to the post of Assistant Mistry (Rolling). He was junior to Nakhwa.

9. Nakhwa affirmed that promotion to the post of Assistant Mistry is to be made on the basis of the seniority subject to rejection of unit. This is admitted by C. Ravindran (Exhibit-13) Asstt. Works Manager. But Ravindran further deposed that for the post of promotion to Assistant Mistry the points which are considered are the seniority, assessment of quality of work, skill and the suitable trade tests prescribed to this effect published in different diary order day to day by the management of India Government, Mint. He personally conducted trade tests on 8-10-1992 to 15-10-1992 in respect of all the persons who were to be promoted. He affirmed that who failed to pass that trade tests were considered as unfit for promotion. In that test Nakhwa could not be passed and therefore he could not be promoted. It can be seen that the trade tests reports are produced alongwith Exhibit-9 and at page Nos. 37 to 48. So far as Nakhwa is concerned his trade tests report is at page 43. It clearly speaks that Nakhwa was tested on appropriate job with a view to assess his quality of work and skill for the promotion to the post of Assistant Mistry. He was not found fit for carrying out higher responsibilities due to the following deficiencies namely 'no leadership qualities'. Nakhwa in his cross examination accepts that the post is of a supervisory nature and for that purpose one should have the qualities of a leader. In his cross examination he also affirmed that he appeared for trade test. I therefore find that he could not do well. Therefore, could not be promoted. There is nothing wrong in it.

10. The Learned Advocate for the workman argued that so far as the disqualification which is mentioned in the trade test is concerned it cannot be said to be a disqualification at all. According to him as per paragraph 13 of the diary orders which are produced alongwith Exhibit-9/2 speaks of meaning of the term promotion subject with rejection of unfit. It states the workman should be considered unfit for promotion during the preceding period of 12 months as attendance was not satisfactory. He therefore argued that as the promotion to the Assistant Mistry this criteria is applicable the worker very well is entitled to promotion.

11. The Learned advocate for the management on the other hand argued that that is not the only criteria. But in view of paragraph-12 of the said standing order the person is required to have leadership qualities for the said post also. As the para reads "Meaning of the terms" Selection cum Seniority in the case of promotion to the posts of Mistries (Tradesman and Non-Tradesman).

The posts of Mistries (Tradesman and Non-Tradesman) are supervisory in nature and the workman to be promoted to these posts should possess the quality of good leadership. Besides skill and competence in his work and trade. This quality will be determined by the department promotion committee by suitable tests and the senior most eligible workman who passes this test would be recommended for promotion to the post of Mistry."

12. To counter this argument the Learned Advocate for the workman submitted that the word used in Paragraph-12 is Mistries and Assistant Mistries. therefore it has no application. I am not inclined to accept this argument because mistries do include Assistant Mistries. Further para-2 of this Clause-12 specifically deals with quality of good leadership. The workman admits the position that qualities of leadership are required for that posts. Under such circumstances after finding the worker not possessing the qualities of leadership his rejection to the said appears to be quite justified.

13. Another argument which was advanced on behalf of the workman is that he being a candidate of Scheduled Tribe should have been considered for the post on the basis of the roaster. As against that it is submitted on behalf of the management the reservation for SC/ST are strictly followed and that is done gradewise in all departments and not on departmentalwise. Referring to page-22 of Exhibit-9 it is tried to suggest that reservation was not given to the workman. I am not inclined to accept this. Ravindran (Exhibit-13) deposed that as per the Government orders the 40-point roaster is maintained for promotion in all trades (designation) and the same is followed in the case of promotion to the cadre of Assistant Mistries. According to him there is a liaison officer for SC/ST who is a member of departmental promotion committee and he was present during the said selection in the case of Nakhwa. He did not object that time. It is not in dispute that at that time the post was given to the general candidate and not to SC/ST candidate. But, he clarified the position that such a position occurs on the basis of suitability and such a state is transferred to other department and the requisite quota is maintained. Nothing is brought on the record to show that such a requisite quota was not maintained at the time of that promotion. I therefore find no merit in the submission of the workman that he was entitled to get the promotion on the basis of roaster. In the result I record my findings on the issues accordingly and pass the following order:

#### ORDER

The action of the General Manager, Mint, Bombay for not offering promotion in favour of Shri C. S. Nakhwa is justified.

S. B. PANSE, Presiding Officer

नई दिल्ली, 4 जून, 1997

का. आ. 1649 :—आंदोलिक विचाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुसरण में, केन्द्रीय सरकार वॉमें पार्ट ट्रस्ट के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में नियंत्रित आंदोलिक विचाद में केन्द्रीय सरकार आंदोलिक अधिकरण, सं. 2—नुचिर्ह के पंचाट को प्रतिष्ठित करती है, जो केन्द्रीय सरकार को 4-6-97 को ग्राप्त हुआ था।

[न. नं.—31012/10/95-माई. आर. ((विविध ) भाग-2]

के. वी. बी. उन्नी, बैस्क अधिकारी

New Delhi, the 4th June, 1997

S.O. 1649.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, No. 2, Mumbai as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bombay Port Trust and their workman, which was received by the Central Government on the 4-6-1997.

[No. L-31012/10/95-IR(Misc) Part-II]

K. V. B. UNNY, Desk Officer

#### ANNEXURE

BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL NO. 2 MUMBAI  
PRESENT :

Shri S. B. Panse, Presiding Officer.

REFERENCE NO. CGIT-2/23 OF 1996  
Employers in relation to the management of  
Bombay Port Trust.

And

Their workmen.

#### APPEARANCE :

For the management.—Mr. M. B. Archan  
Advocate.

For the workmen.—Mr. Umesh Nabar, Advocate.

Mumbai, the 13th May, 1997

#### AWARD—PART-II

On 20th January, 1997 by Part-I Award I came to the conclusion that the domestic inquiry which was held against the workman was as per the Principles of Natural Justice and the findings of the inquiry officer are no perverse. Now, by this Award I have to answer the remaining issues.

2. Before giving reasons to the remaining issues it will be better to give in nutshell the history of the case.

3. Namdeo Mahajan and one another category-'A' mazdoor of dock department was stopped by one Lotankar, police constable near the gate of their work premises at about 3.30 a.m. on 19-2-1982. They were then taken to Yellow gate police station, brought back again on the spot and later on were charge-sheeted by the police. Immediately he was suspended. The Metropolitan Magistrate convicted the workman and another. He preferred an appeal which was allowed and the matter was remanded back. Later on the Metropolitan Magistrate acquitted them. He was taken into service. The management thereafter started a domestic inquiry against him after issuing him a charge-sheet (Ex-6/1). It was alleged that on 20-2-1983 at about 4.15 a.m. the worker and one Gaikwad Category-'A' mazdoor were found red handed alongwith five others when they were stealing goods worth Rs. 9,50,000 from the port trust custody from a container bearing No. CMMU-2368559(2) at 7,

Ware House, P & V Docks and loading the goods in the dicky of an Ambassador car bearing No. MMH 4390. It was a major misconduct. The workman denied the charges. Ultimately in a domestic inquiry the inquiry officer came to the conclusion that the charges are proved. Then the disciplinary authority following the due procedure awarded punishment of termination of the workman.

4. Now, the issues that fall for my consideration and my findings there on are as follows :

Issues.	Findings
3. Whether the termination of the service of Shri Namdeo Mahajan, the worker by the management is legal and justified ?	Yes.
4. If not, to what relief the worker is entitled to ?	Does not survive

#### REASONS

5. It can be seen that there was a serious charge against the worker for committing the theft. I have already come to the conclusion that the findings of the inquiry officer are not perverse.

6. Now, it is to be seen whether the punishment of termination of the worker is shockingly disproportionate to the charges proved. When there is allegation of theft or attempt to commit the theft on an employee then there cannot be any lesser punishment than this. Mr. Nabar, the Learned Advocate for the employee argued that the disciplinary authority did not consider the past record of the workman while awarding punishment. I do not find any merit in it. He further submitted that when he was taken back in service after the acquittal by the Metropolitan Magistrate. The department had given him a certificate of best worker and it should have been considered by the disciplinary authority while awarding the punishment. It is tried to submit on behalf of the management that, that certificate is not as a best worker, but, it is issued by the dock safety certificate to the worker. Even then for the sake of argument it is accepted that the worker is the best worker among all the workers in the dock that does not mean that he can commit any act which can be said to be a major misconduct and claim benefit on the basis of the qualification such as he is the best. I therefore, do not find any merit in the said certificate to give any lesser punishment to the worker in the present matter.

7. Namdeo Mahajan (Exhibit-15) could not bring on the record that while awarding this punishment the discrimination is carried out by the management and similarly placed workmen were awarded lesser punishment. For all these reasons I find that the action which is taken by the management is justified. In the result I record my findings on the issues accordingly and pass the following order :

#### ORDER

The termination of service of Shri Namdeo Ambaji Mahajan category-'A' mazdoor, Docks department by  
1494 GI/97-7

the management of Bombay Port Trust is legal and justified

S. B. PANSE, Presiding Officer.

नई दिल्ली, 4 जून, 1997

का. अ. 1650.—ओदोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी. डब्ल्यू. सी., कंटेनर फ्रेट स्टेशन, जवाहर नाल नेहरू पोर्ट, नई मुम्बई के प्रबन्धसंबंध के संबंध नियोजनों और उनके कर्मकारों के बीच, अनुबंध में लिंडिष्ट ओदोगिक विवाद में केन्द्रीय सरकार ओदोगिक अधिकारण, स. 2—मुम्बई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-6-97 को प्राप्त हुआ था।

[स. एस--42012/12/95--आई. प्रार.--(विविध)]

क. वी. वी. उणी, डैस्क अधिकारी

New Delhi, the 4th June, 1997

S.O. 1650.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, No. 2, Bombay, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of C.W.C. Container Freight Station, J.N.P., New Bombay and their workman, which was received by the Central Government on 4-6-97.

[No. L-42012/12/95-IR(Misc.)]

K. V. B. UNNY, Desk Officer

#### ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT :

Shri S. B. PANSE, Presiding Officer

Reference No. CGIT-2/22 of 1996

Employers in relation to the management of CWC, CFS, JNP, New Bombay

AND

Their Workmen

#### APPEARANCE :

For the Employer—Ms. S. I. Shah, Advocate  
For the Workmen—Mr. Inder Jit Singh,  
Advocate

Mumbai, the 7th May, 1997

#### AWARD

The Government of India, Ministry of Labour, by its Order No. L-42012/12/95-IR(Misc.), dated 25th April, 1996, had referred to the following Industrial Dispute for adjudication.

(1) "Whether the action of the management of Central Warehousing Corporation, Container Freight Station, Jawaharlal Nehru Port, New Bombay in withholding the HRA sum of Rs. 197.20 from the wages of August, 1992 of Shri G. L. Bhosale, CDR-II is justified ? If not, to what relief the workman is entitled to ?"

(2) "Whether the action of the management of Central Warehousing Corporation, Container Freight Station, Jawaharlal Nehru Port, New Bombay in not cancelling transfer of Mr. J. D. Kawale, JS and not allowing to resume duty at proper place of posting is legal and justified ? If not, to what relief the workman is entitled to ?"

2. The United CWC Employees Organisation through its Lt. General Secretary filed a Statement of claim at Exhibit-2. As regards to Mr. G. L. Bhosale CDR-II a sum of Rs. 197.20 was unjustly and illegally deducted out of his wages for the month of August 1992 allegedly on the ground that the workman failed to occupy the quarter allotted to him by the Corporation. It is averred that as the deduction is illegal as no order under Section 42 of Warehousing Corporation Act had been issued by the Competent Authority making it obligatory for the senior most Chowkidar to occupy and stay in the corporation quarter allotted to him. It is therefore pleaded that no such rule is made applicable to the other categories to employees of the corporation. Therefore, this rule is void.

4. The organisation pleaded that J. D. Kawale JS was ordered to proceed on tour by the management by its Order dated 26-8-92. The said order was finally cancelled by the management on the intervention of the Regional Labour Commissioner (C) Mumbai on 29-12-92. It is averred that even though his transfer was ultimately cancelled by the management the workman was treated on leave and not paid his wages from the date of the transfer to the date he resumed duty. It is submitted that the Corporation had earlier in the case of two other employees namely Pundir and Sharma both of Lucknow region treated the absence of the said two workmen who had also not proceeded on tour after being relieved for the purpose on 29-6-88 and 15-6-88, respectively as on duty. It is averred that despite repeated requests and representation to the management to similarly treat the absence of Kawale on duty the management had not agreed it thus applied different discriminatory standards to the case of Kawale, without any rational basis. For all these reasons it is prayed that the management may be directed to refund Rs. 197.20 ps. to Bhosale with

interest on it from August 1992 and treat period of absence of Kawale from 26-8-92 till he was allowed to resume work as on duty with other reliefs.

5. The management resisted the claim by the written statement Exhibit-4. It is averred that as per the rules and letter of appointment the senior most Chowkidar are allotted quarters. They have to stay there. Bhosale being the IIInd senior most Chowkidar was allotted the quarter. He was also informed that he should take possession of the flat on or before 31st July 1992 failing which HRA with effect from 1-8-92 will not be payable to him as per the directive of the Head Office on the subject. Accordingly the sum of Rs. 197.20 ps was deducted towards HRA from the wages of Bhosale Chowkidar for August 1992 and it cannot be said that it is withheld. It is denied that this deduction is illegal under Section 42 of the Warehousing Corporation Act.

6. The management pleaded that J. D. Kawale was transferred by the Head Office on his own request from Cotton Green Mumbai to CFS, Kalamboli. Kawale was deputed on tour along with some other officials to Jawaharlal Nehru Port for the additional prestigious job of Wheat handling by this region and was asked to report to the port operation officer which was open that time as a sub unit. He had a house at Nerul which is convenient for the said job. It is submitted that the union misconstrued the order as a transfer. But it is asserted that he was not transferred from Kalamboi to Jawaharlal Nehru Port but was deputed on tour only to handle the additional work load. It is submitted that Kawale was on commuted leave on medical grounds from 27-8-92 to 20-11-92. He joined alongwith the medical certificate and fitness certificate. It is averred that after joining the duty on 21-11-92 his entire leave period has been regularised by office order dated 30-11-92. It is submitted that it is in the interest of the Corporation to depute the employees on the basis of exigencies of the work. It is submitted that the demand of Kawale is unjust and cannot be granted. It is prayed that under such circumstances the reference may be answered accordingly.

7. The organisation filed a rejoinder at Exhibit-5 and reiterated its claim which is made in the statement of Claim. It denied the contention taken by the management in their written statement.

8. The issues that fall for my consideration and findings there on are as follows :

ISSUES	FINDINGS
1. Whether the action of the management in withholding the HRA of Rs. 197.20 ps	Yes.

to Shri Bhosale from the wages of August 1992 is justified ?	
2. If not, what relief he is entitled to ?	Does not survive.
3. Whether the action of the management in not treating the absent period of J. D. Kawale as on duty is legal and justified ?	Yes.
4. If not, what relief he is entitled to ?	Does not survive.

### REASONS

9. P. M. Gonsalves (Exhibit-8) Joint Secretary of the organisation deposed for the worker. He was not cross examined by the management. There is no oral evidence on behalf of the management. In the Written argument filed by the management it is tried to submit that the evidence of Gonsalves is here say evidence and is not admissible. The submissions on this behalf cannot be accepted. So far as the evidence before the Tribunals are concerned there is no application of Evidence Act. The criteria of here say evidence which is said to be in the evidence Act has no application to the proceedings before the Tribunal. But even then so far as the evidence of Gonsalves is concerned it does not help the organisation. It is because the whole reference is based on the documents on the record and there is no need for any oral evidence in the matter.

10. It is not in dispute that G. L. Bhosale was the second senior most Chowkidar of the Corporation. By a memorandum (Exhibit-6|1) dated 22-5-92 quarter was allotted to him. There is a circular dated 16-5-91 (Exhibit-6|2) pertaining to occupying the quarters by the Chowkidars. That circular clearly speaks of not occupying the quarters by Chowkidars and non-payment of HRA. The senior most Chowkidar has to be given a quarter and if he is not willing to occupy the same then the next senior most is entitled to the same. Those quarters are not to be allotted to any body else. The management by their Memorandum (Exhibit-6|4) dated 28-7-92 informed Bhosale that he should take possession of the quarter failing which HRA will not be payable as per the directive of the Head Quarters in this regard. The management also produced proforma indicating terms and conditions of the appointment in a particular cadre (Exhibit-6|5).

11. From these documents it is very clear that Bhosale was required to occupy the quarter failing which he is not entitled to HRA. It is common knowledge that these quarters are made for Chowkidars for the safety of the Corporations. If they do not occupy the same the safety is at stake. Therefore necessary circulars are issued by the Corporations regarding occupation of these quar-

ters. I do not find any illegality in the same. So far as the applicability of Section 42 of the Warehousing Corporation is concerned it has no merit. The appointment order itself speaks of occupying the quarter if allotted. Bhosale was informed the deductions will be made if he failed to occupy the quarter. Under such circumstances the action of the management not paying the HRA amounting to Rs. 197. 20 ps cannot be said to be illegal.

12. So far as the case of Kawale is concerned it has no merit at all. Kawale alongwith others were directed to report for duty at Jawaharlal Nehru Port on tour only. That was not transfer at all. That order is at Exhibit-6|9. This position was cleared by the Corporation by their letters dated 5-9-92 and 2-9-92 which are at Exhibit-6|10 and 11 respectively. The Corporation also informed this fact to the Secretary General of the Organisation by their letter dated 2-9-92 (Exhibit-6|12). By no stretch of imagination it can be said that Kawale was transferred.

13. It can be seen that Kawale gave a leave application alongwith medical certificate dated 21-11-92 (Exhibit-6|12). He also gave a joining report dated 21-11-92. He asked for commuted leave for 86 days w.e.f. 27-8-92 to 20-11-92. It is not in dispute that the entire leave period was regularised by the office order dated 30-11-92 and the salary has been paid to him. I find absolutely no merit in the case of organisation in both these matters. The documents on the record supports the case of the management. I record my findings on the issues accordingly and pass the following order :

### ORDER

The action of the management of Central Warehousing Corporation, Container Freight Station, Jawaharlal Nehru Port, New Bombay in not paying HRA of Rs. 197.20 ps. to Bhosale in the month of August, 1992 is justified.

The action of the management in case of J.D. Kawale is treated as legal and justified.

S. B. PANSE, Presiding Officer

नई दिल्ली, 4 जून, 1997

का. आ. 1651.—बौद्धोगिक विवाद अधिनियम, 1947 (1947 का 14) की शारा 17 के अनुसरण में, केन्द्रीय सरकार देशी पतन क्षेत्रीय ग्रामीण बैंक, गोडा के प्रबन्धतात्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुवंश में निर्दिष्ट बौद्धोगिक विवाद में केन्द्रीय सरकार बौद्धोगिक अधिकरण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-6-97 को प्राप्त हुआ था।

[संख्या एल--12012/160/93--आई. आर. (बी-II)]

पी. जे. माइकल, ईस्क मधिकारी

New Delhi, the 4th June, 1997

S.O. 1651.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Adhyaksh, Devi Patan Kshetriya Gramin Bank, Gonda and their workman, which was received by the Central Government on the 3-6-1997.

[No. L-12012/160/93-I.R(B.I.)]

P. J. MICHAEL, Desk Officer

#### ANNEXURE

BEFORE SRI B. K. SRIVASTAVA PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT PANDU NAGAR, KANPUR

Industrial Dispute No. 110 of 1996

In the matter of dispute between :

Sri Rakesh Kumar Gupta, 532-Kha/179 Mehdi Tola Bandariya Bazar Aliganj, Lucknow.

AND

Adhyaksh, Devi Patan Kshetriya Gramin Bank Phoolvilla 376 Malviya Nagar, Gonda.

#### AWARD

1. Central Government, Ministry of Labour, vide its notification number L-12012/160/93-I.R. B-1 dated 25-9-1995, has referred the following dispute for adjudication to this Tribunal—

"Whether the Action of the Devi Patan Gramin Bank in not reengaging Sri Rakesh Kumar Gupta, exclerk cum typist w.e.f. 11-9-1992 under the provisions of sec. 25G and 25H of the I.D. Act, is legal and justified. If not, to what relief the concerned workman is entitled ?

2. The case of the concerned workman Rakesh Kumar Gupta, is that he was appointed in the clerical cadre of the opposite party Devi Patan Kshetriya Gramin Bank on 11-5-1982 for a period of 60 days as clerk cum typist. Thereafter vide order dated 13-7-1982 he was again given 60 days appointment as clerk cum typist. Thereafter, his services were terminated w.e.f. 10-9-1982. At that time juniors to him like Harimohan Pandey and Hardaya Narain Verma were retained in service. Further Anil Kumar Chaturvedi and Jitendra Pal Singh have been engaged in the service without affording him opportunity. Hence his retrenchment is bad in breach of section 25C and 25H of I.D. Act.

3. The opposite party has filed reply in which it has been alleged that concerned workman was engaged for a fixed period. His engagement came to an end by efflux of time. In this way it is not the case of retrenchment as envisaged by section 2(bb)(oo) of

I.D. Act, and thereby provisions of section 25G & 25H of I.D. Act would also not be applicable.

4. In the rejoinder, nothing new has been alleged.

5. In support of his case, the concerned workman Rakesh Kumar Gupta w.w.t has examined his self besides he has filed Ext. W-1 to W-18. In rebuttal there is evidence of K. K. Dixit, an officer of the bank. Besides there is Ext. M-1 to M-5.

6. In this case only Ext. M-1 to M-5 are relevant. The documents filed by the concerned workman in the nature of applications and reminders given by the concerned workman to the management. There are postal receipts. In this case oral evidence is not of any relevance. Ext. M-1 is the appointment letter dated 11-5-1982 by which the concerned workman. It has been engaged for 60 days Ext. M-2 is the termination order dated 6-7-1982. Ext. M-3 is application dated 13-7-1982 of the applicant and Ext. M-4 is the order dt. 13-7-1982 for making fresh appointment for sixty days and Ext. M-5 is the termination order dated 10-9-1982. From these papers it becomes clear that at the most the concerned workman had at a stretch worked for 120 days, by means of the appointment orders for each being of sixty days. Further it was for fixed period. In my opinion when appointment is made for in two spans it cannot be said that unfair labour practice has been adopted by making such appointment on permanent post. Be that as it may, the hard fact remains that appointment of concerned workman was for a fixed period and as such his case is covered by provisions of section 2(bb)(oo) of I.D. Act. In this way termination of service by efflux of time would not amount to retrenchment.

Consequently such workman will also not be entitled for benefit of provisions of section 25G and 25H of I.D. Act.

7. Accordingly my award is that termination of concerned workman by efflux of time is not bad in law and the concerned workman is not entitled for any relief.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 5 जून, 1997

का. आ. 1652 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में, केन्द्रीय सरकार पश्चिम रेलवे, मुम्बई के प्रबन्धतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, वी—II मुम्बई के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-6-97 को प्राप्त हुआ था।

[संख्या पत्र-41011/27/95—ग्राइ. मार. (वी—II)]

षी. जे. भाईकल, डैस्ट्रिक्ट अधिकारी

New Delhi, the 5th June, 1997

S.O. 1652.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, No. II, MUMBAI as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Western Railway MUMBAI and their workman, which was received by the Central Government on the 4-6-1997.

[No. L-41011/27/95-IR (BI)]

P. J. MICHAEL, Desk Officer.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II MUMBAI

PRESENT

SHRI S. B. PANSE  
PRESIDING OFFICER

REFERENCE NO. CGIT-2/4 of 1997

Employers ir. relation to the Management

Western Railway Mumbai

AND

THEIR WORKMEN

#### APPEARANCE :

FOR THE EMPLOYER : Mr. Suresh Kumar  
Advocate.

FOR THE WORKMEN : Mr. M. B. Anchan  
Advocate.  
Mr. A. G. Rajput  
Representative.

MUMBAI, dated 21st May, 1997

#### AWARD

The Government of India, Ministry of Labour by its order No. L-410011/27/95-IR (BI), dated 7-2-97, had referred to the following Industrial Dispute for adjudication.

"Whether the action of Railway administration Sr. DST and DRM, Bombay Central for holding trade test for turner goods-III and declaring Sh. Dilip and Shri Masilamani unjustified is justified or not? What relief should be granted?"

2. The Secretary of the Tribunal had issued notice to the parties for appearance. The union filed Vakalatnama of Advocate Anchan and the management filed Vakalatnama of Advocate Suresh Kumar. The matter was posted for filing

statement of claim after giving sufficient opportunity to the parties. Today the Divisional Secretary of the Paschim Railway Karmachari Parishad filed a purshis (Exhibit-4) stating that it does not want to prosecute the above reference and the same may be disposed off accordingly. The advocate of the union had signed the purshis. Under such circumstances I pass the following order :

#### ORDER

The Reference is disposed off for want of prosecution.

S. B. PANSE, Presiding Officer.

नई दिल्ली, 9 जून, 1997

का गा. 1653.—आंशिक विवाद अधिनियम, 1947 (1947 वा 14) की आरा 17 के अनुसरण में केन्द्रीय सरकार नोर्डेन रेलवे, लखनऊ के प्रबन्धनसंघ के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निविष्ट आंशिक विवाद में केन्द्रीय सरकार और्डोगिक अधिकरण, कानपुर के प्रधापट को प्रकाशित करती है, जो केन्द्रीय सरकार द्वारा 6-6-97 को प्राप्त हुआ था।

[संख्या एन-41012/100/89-आई, आर. (बी-II)]

पा. जे. माईकल, ऐस्क अधिकारी

New Delhi, the 9th June, 1997

S.O. 1653.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, KANPUR as shown in the Annexure, in the industrial dispute between the employers in relation to the management of NORTHERN RAILWAY LUCKNOW and their workman, which was received by the Central Government on the 6-6-1997.

[No. L-41012/100/89-IR (BI)]

P. J. MICHAEL, Desk Officer.

#### ANNEXURE

Before Sri B. K. Srivastava Presiding Officer Central Government Industrial Tribunal-cum Labour Court Pandu Nagar, Kanpur.

Industrial Dispute No. 101 of 1990  
In the matter of dispute between :  
Zonal Working President  
Uttar Railway Karamchari Union,  
96/196, Roshan Bajaj Lane,  
Ganeshganj, Lucknow.

And

Divisional Railway Manager  
Northern Railway,

Lucknow.

Appearance : P. K. Tiwari for the workman and Hamid Qureshi for the Management.

#### Award

1. Central Government, Ministry of Labour, New Delhi, vide its notification no. L-41012|100|89.I.R. B-1 dated 29-3-90 has referred the following dispute for adjudication to this Tribunal—

Whether the General Manager (Personnel) New Delhi and DRM Northern Railway, Lucknow were justified in not treating the period from 1-11-83 to 31-5-86. 1985 on duty instead of leave due to Sri Mohd. Rafi Driver if not, what relief the workman was entitled to ?

2. The concerned workman joined the predecessor in interest of the opposite party Northern Railway on 27-10-44 as a Driver. On that time his date of birth was recorded as 27-10-85. On the verge of retirement he applied for change in the date of birth on the strength of High School Certificate in which his date of birth was recorded as 26-5-27. The Divisional Personnel Officer vide order dated 9-5-85 had allowed this representation and date of birth was changed the absence from duty was treated as leave due.

3. The case of the concerned workman is that after his date of birth was changed he was entitled to be deemed in service but the management has not done so. Hence the period from 1-11-83 to 31-5-85 should be treated on duty.

4. The opposite party has filed reply in which it has been alleged that at the time of his appointment he had given his age as 19 years, hence he was taken in service treating him to be eligible.

At that time no documentary evidence like High School Certificate was given to prove his date of birth. It was done at the verge of retirement. Hence legally he was not entitled for change in date of birth as according to this he would have been minor and consequently ineligible for appointment. Any way the management has accommodated him for all purposes except that his absence has been treated as leave due. There is nothing wrong in it.

5. In the rejoinder nothing new has been said.

6. Having heard both sides I am of the view that the concerned workman has not come up with clean hands. Had he given his true age he would not have been entitled for his employment on 7-10-44. Perhaps it was with the object of giving employment that factum of minority was suppressed. Hence the employment was obtained by deceitful means. Further if the request of the concerned workman is accepted it will amount to tribunals tacit approval of employment at initial stage which was not justified. Further I am of the opinion that this dispute having been raised at very belated stage ought not to have been entertained by the management and thereby creating problem for themselves. In any case I am of the view that since the management has exercised its discretion by changing date of birth in exercise of para 2044 of Railway Establishment Code, the Tribunal should not interfere with its discretion treating the absence as leave due as it is not based on malafide intention.

7. In view of foregoing discussions, my award is that the action of the opposite party railway in not treating period from 1-11-83 to 31-5-85 as on duty is justified and the concerned workman is no entitled for any relief.

B. K. SRIVASTAVA, Presiding Officer.

नई दिल्ली, 19 जून, 1997

का.आ. 1654.—जबकि, पवन हंस हैलिकाप्टर लि. के प्रबन्धन तथा उनके कर्मकारों जिसका प्रतिनिधित्व पवन हंस पायलट्स गिल्ड मुम्बई द्वारा किया जा रहा है के बीच एक औद्योगिक विवाद खड़ा है।

और जबकि, उपरोक्त प्रबन्धन तथा उनके कर्मकार, जिनका प्रतिनिधित्व पवन हंस पायलट्स गिल्ड, मुम्बई द्वारा किया जा रहा है, औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 10-क की उपधारा (1) के अंतर्गत एक लिखित करार द्वारा उक्त विवाद को न्याय निर्णय के लिए भेजने पर सहमत है और उक्त विवाचन करार की एक प्रति केन्द्र सरकार को भेज थी है,

अतः, अब, उपर्युक्त अधिनियम की धारा 10-क की उपधारा (3) के अनुसरण में केन्द्र सरकार उक्त करार को एतद्वारा प्रकाशित करती है।

करार

(ओर्डोरिंग के विवाद अधिनियम, 1947 को धारा 10-के अंतर्गत)  
पक्षकारों का नाम

## नियोजक के प्रतिनिधि

1. श्री महाप्रबन्धक डी.सी. कौशल,  
महा प्रबन्धक (डब्ल्यू.आर.)
2. श्री ए.के. श्रीवास्तव,  
उप महा प्रबन्धक (पी. एण्ड आई.आर.)
3. विंग कमांडर, जी.एस. अरोड़ा,  
वारिष्ठ प्रबन्धक (एच.आर.डी.) कारपोरेट  
पक्ष हन्स हैलीकाप्टर लि., मुम्बई

## कम्बकारों के प्रतिनिधि

1. कमांडर ए.के. चावला,  
अध्यक्ष
2. कैप्टन ए.पी. पाटी,  
मचिव

पक्ष हन्स पायलट्स गिल्ड, मुम्बई

पक्षकार निम्नलिखित विवादों को विवाचन के लिए सर्वश्री एस. कृष्णमूर्ति पूर्व संयुक्त सचिव तथा वित्तीय सलाहार नामर विमान मंत्रालय, भारत सरकार सी-12 सीडी.डी.ए. फ्लैट्स, मुनिरका, नई दिल्ली तथा हरीग ०८. जगतिअन्नो, वारिष्ठ अधिकारी, मुम्बई उच्च न्यायालय, 205 ए, नीलकंट, ९६ मैरीन ड्राइव, मुम्बई-400002 के पास भेजने पर सहमत हो गए हैं।

## (I) विवाद के विशिष्ट मामले :

- (क) क्या पक्ष हन्स पायलट्स गिल्ड द्वारा दिनांक 11-12-96 के उनके मांग पत्र संच्छा पी.एच.पी.जी./१०८३/१०७६/९६ (अनुबन्ध-‘क’ ) और तत्पक्ष दिनांक 16-4-97 के पत्र (अनुबन्ध-‘ब’ ) के तहत उन्हें प्रस्तुत की गयी मांगें विधिसम्मत और न्यायोचित हैं? यदि आंशिक रूप से ऐसा है तो पायलट कितनी राहत के हकदार हैं और किस तारीख से।
- (ख) विवाचक कार्य धंटों और अंतरिम राहत के मुद्रों का प्राथमिकता आधार पर विशेष रूप से तीन माह के भीतर निर्णय करेंगे।
- (ग) विवाचक वर्तमान स्थिति में पहचाने वाली परिस्थितियां उत्पन्न करने के लिए जिम्मेदारी नियत करेंगे और किसी व्यक्ति विशेष/संगठन द्वारा किसी व्यक्ति विशेष/संगठन को होने वाले किसी नुकसानध्ययों, कठिनाई और असुविधा के लिए संवेद व्यतीपूति की सीमा का निर्धारण करेंगे।
- (घ) विवाचक निम्नलिखित के बारे में निर्णय लेंगे।
  - (i) क्या प्रबन्धन की यह मांग कि अधिसूचित उड़ान कार्यक्रम के अनुसार और 17-4-97 से 20-5-97 तक की अवधि के दौरान शनिवारों और रविवारों को लूटी हेतु रिपोर्ट न करने के लिए काम नहीं तो वेतन नहीं के साथ भौमिक सिद्धांत के आधार पर पायलटों के बेतनों से कौटी की जाएगी सही है, न्यायोचित है और विधिसम्मत है?
  - (ii) क्या पक्ष हन्स पायलट्स गिल्ड की यह मांग कि पायलटों को 17-4-97 से 20-5-97 तक की अवधि के लिए अंतर्रित कार्य धंटों से अधिक कार्य करने के लिए अंतर्रित पारिश्रमिक का भुगतान किया जाना चाहिए, सही है, न्यायोचित है और विधिसम्मत है?
- विवाचन कार्यवाहियां मुम्बई में 1-6-97 से प्रारम्भ होकर दिन प्रतिदिन आधार पर चलेंगी।
- पक्षकार अपने-अपने विवाचकों का खर्च/श्रम बहन करेंगे।
- पक्ष हन्स हैलीकाप्टर लि. और पक्ष हन्स पायलट्स गिल्ड दोनों ही निर्धारित समय सीमा के भीतर विवाचन कार्यवाहियों को निपटाने के लिए विवाचकों को सभी प्रकार की सहायता प्रदान करेंगे। दोनों ही पक्षकार सत्यनिष्ठा-पूर्वक घोषणा करते हैं और एक दूसरे को आपवासन देते हैं कि वे कोई विलम्बकारी कार्रवाई अंगीकार नहीं करेंगे अथवा गुण-दोष के आधार पर विवाचन को विफल करने के लिए कोई कदम नहीं उठायेंगे।

## (II) अंतर्गत प्रतिष्ठान अथवा उपनियोजितों के नाम और पते सहित विवाद में शामिल पक्षकरों के ब्यौरे:—

पक्ष हन्स पायलट्स गिल्ड, पक्ष हन्स हैलीकाप्टर लि. पक्ष हन्स हैलीकाप्टर लि. जो कंपनी अधिनियम के द्वारा नियोजित पायलटों के प्रतिनिधि, मार्केट अंतर्गत एक पंजीकृत कंपनी है और जिसका कार्यालय जूहे हवाई अड्डा विले पार्स, मुम्बई में है।

पक्ष हन्स हैलीकाप्टर लि., जुहे हवाई अड्डा,  
एस.डी. गोड, विले पार्स, मुम्बई-400056

(iii) कामगार का नाम, यदि वह स्वयं विवाद में शामिल है या संबोधित कामगार का प्रतिनिधित्व करने वाले संघ का नाम, यदि कोई हो।	पतन हंस पायलट्स गिर्ल
(iv) प्रभावित उपक्रम में नियोजित कामगारों की कुल संख्या ।	780
(v) विवाद से प्रभावित या प्रभावित होने की संभावनाएँ वाले कामगारों की अनुमानित संख्या हम आगे सहमत हैं कि विवाचक का निर्णय हम पर बोध्य कारी होगा।	लगभग 72

यदि विवाचक अपने भत में समान रूप से विभक्त हैं तो वे एक अन्य व्यक्ति को निर्णयिक के रूप में नियुक्त करेंगे जिनका पंचाट हम पर बोध्यकारी होगा।

विवाचक अपना पंचाट उस माह की अवधि या ऐसे अड़े हुए समय में देंगे जैसा कि हमारे मध्य पारस्परिक समझौते द्वारा लिखित रूप में बढ़ाया जाए और यदि आवश्यक हो तो उप मुख्य अमायुक्त (केन्द्रीय), मुम्बई की भाष्यता सी जायेगी। यदि उपर्युक्त उल्लिखित अवधि के भीतर पंचाट नहीं दिया जाता है तो विवाचन के लिए मंदर्म सम्बन्ध ही रह होंगे जायेगा और हम नदे विवाचन के लिए बाता करने के लिए मुक्त होंगे।

नियोजक प्रतिनिधि ह./—	कामगार प्रतिनिधि ह./—
1. डी.सी. कौशिक महाप्रबन्धक	1. (ए.के. चावला) अध्यक्ष
2. ह./— (ए.के. श्रीवास्तव) उप महा प्रबन्धक ह./—	2. (एम.पी. पाटी) सचिव
3. (जी.एस. अरोड़ा) वर्षराष्ट्र प्रबन्धक	विवाचक की मंजूरी

दिनांक 13-5-97

संक्षा में

पतन हंस हैलिकाप्टस लि.,  
सफदरजंग विमानपत्तन,  
नई दिल्ली-110003

विषय : औद्योगिक विवाद अधिनियम की धारा 10-क के अंतर्गत स्वैच्छिक विवाचन के लिए पतन हंस पायलट्स गिर्ल के मांग पत्र से संबंधित विवाद को संदर्भित करता।

महोदय,

परस्पर रूप से सहमत निवंशन और शर्तों के आधार पर उपर्युक्त भासले के संबंध में विवाचक के रूप में नियुक्त किए जाने के लिए अपनी सहमति देता हूँ।

आषका

ह./—

(एम. कृष्ण मृति)

7 मई, 1997

महा सचिव,  
पवन हंस पायलट्स गिल्ड,  
मुम्बई  
प्रिय महोदय,

आपके गिल्ड और पवन हंस लि. प्रबन्धन के मध्य विवाद के मामले में आर्द्धांगिक विवाद अधिनियम, 1947 की धारा 10क के अंतर्गत संदर्भ के मामले में एक विवाचक के रूप में कार्य करने में एन्ड डारा परम्पर स्प से सहभत शर्तों पर विवाचक के रूप में कार्य के लिए महमत देता है।

आपका,

हृ.

(हरेण एम. जगतीयानी)

[फा. सं. एल-11013(01)/97-आईआर (सी आई)]

इंज मोहन, इम्क अधिकारी

New Delhi, the 19th June, 1997

S.O. 1654.—Whereas an industrial dispute exists between the management of Pawan Hans Helicopter Ltd. (PHHL) and their workmen represented by Pawan Hans Pilots' Guild (PHPG), Mumbai.

And whereas, the said management and their workmen represented by Pawan Hans Pilot's Guild (PHPG) Mumbai have by written agreement under sub-section (i) of Section 18-A of the Industrial Dispute Act, 1947 (14 of 1947), agreed to refer the said dispute to arbitration and have forwarded to the Central Government a copy of the said arbitration agreement;

Now therefore, in pursuance of sub-section (3) of Section 10-A of the said Act, i.e. Central Govt. hereby publishes the said agreement.

## AGREEMENT

(Under Section 10-A of the Industrial Dispute Act, 1947)

## BETWEEN

## NAMES OF THE PARTIES

## Representing Employer

1. Group Capt. D.C. Kaushik,  
Gen. Manager (W.R.)
2. Sh. A.K. Srivastava,  
Dy. Gen. Manager (P&IR)
3. Wg. Cdr. G.S. Arora,  
Sr. Manager (HRD) Corporate.

Pawan Hans Helicopter Ltd.,  
Mumbai.

## Representing Workmen

1. Cdr. A.K. Chawla,  
President.
2. Capt. A.P. Pati'  
Secy.

Pawan Hans Pilots Guild,  
Mumbai.

It is hereby agreed between the parties to refer the following disputes to the arbitration of Sh. S. Krishnamoorthy former Joint Secretary and Financial Advisor, Ministry of Civil Aviation, Government of India C-12, C DDA Flats, Munirka, New Delhi and Sh. Harish M. Jagtiani. Senior Advocate, Bombay High Court, 205A, Neelkanth, 96 Marine Drive, Mumbai-400002.

## I. Specific Matters in dispute:

(a) Whether the demands of Pawan Hans Pilots Guild submitted by them vide their charter of demands No. PHPG/MOS/1076/96 dt. 11-12-96 (Annexure 'A') and subsequent letter dated 16-4-97 (Annexure 'B') are legal and justified? If partially to what extent of relief the pilots are entitled to and from what date.

(b) The Arbitrators shall decide issues of working hours and interim relief on priority basis preferably within three months.

(c) The Arbitrators shall fix the responsibility for the creation of the conditions leading to the present situation and determine the extent of compensation payable by any individual(s)/Organisation to any individual(s)/Organisation for any loss/expenses, hardship and inconvenience etc. caused.

(d) The Arbitrators shall decide.

(i) Whether the Management's demand that deductions shall be made from the salaries of the Pilots on the basis of Universal Principal of No work No Pay for not reporting for duty as per flying programme notified and on Saturdays and Sundays during the period from 17-4-97 to 20-5-97 is correct, justified and legal?

(ii) Whether the Pawan Hans Pilots Guild's demand that the Pilots should be paid extra remuneration for the period from 17-4-97 to 20-5-97 for having worked in excess of the normal, routine, agreed and stipulated working hours is correct, justified and legal?

2. The proceedings of the Arbitration shall be at Mumbai on day to day basis commencing from 1-6-97.

3. The parties shall bear the cost/expenditure of their respective Arbitrators.

4. Both the Pawan Hans Helicopter Ltd. and Pawan Hans Pilots Guild shall render all reasonable assistance to Arbitrators to conclude the arbitration proceedings within the agreed time frame. Both the parties solemnly declare and assure each other that they shall not adopt any delatory action or take any steps to frustrate the arbitration of the dispute of the merits.

(II) Details of the parties to the disputes including the name and address of the establishment or undertakings involved.

Pawan Hans Pilots Guild,  
Representing the Pilots employed by  
Pawan Hans Helicopter Ltd.,  
C/o Pawan Hans Helicopter Ltd.,  
Juhu Air Port, S.V. Road, Vile Parle,  
Mumbai-400056.

Pawan Hans Helicooter Limi ted  
A company registered under Companies Act and  
having its Office at  
Juhu Air Port Vile Parle, Mumbai.

(III) Name of workmen in case he himself is involved  
in the dispute or the name of the Union if any,  
representing the workmen in question.

Pawan Hans Pilots Guild

(IV) Total Number of workers employed in the  
Undertaking affected. 700

(V) Estimated No. of Workmen affected likely to be  
affected by the dispute: Approx. 72

We further agree that the decisions of Arbitrator be binding on us.

In case arbitrators are equally divided in their Opinion they shall appoint another person as umpire whose award shall be binding on us.

The Arbitrators shall make their award within a period of 6 months or within such further time as is extended by mutual agreement between us in writing and if need be the assistance of Deputy Chief Labour Commissioner (Central), Mumbai shall be obtained. In case the award is not made within the period aforementioned the reference to arbitration shall stand automatically cancelled and we shall be free to negotiate for fresh arbitratorion.

#### REPRESENTING EMPLOYER

#### REPRESENTING WORKMEN

Sd/-

Sd/-

1. (D.C. Kaushik)  
Gen. Manager

1. (A.K. Chawla)  
President

Sd/-

Sd/-

2. (A.K. Srivastava)  
Dy. Gen. Manager

2. (A.P. Pati)  
Secretary

Sd/-

3. (G.S. Arora)  
Sr. Manager

## CONSENT OF THE ARBITRATOR

Date : 13-5-97

To

Pawan Hans Helicopters Ltd.,  
 Safdarjung Airport,  
 New Delhi-110 003.

**Subject :** Reference of Dispute relating to charter of demands etc. of Pawan Hans Pilots Guild (PHPG) to voluntary Arbitration under section 10-A of Industrial Disputes Act.

Sir

I am hereby give my consent for being appointed as an arbitrator in connection with the above matter on mutually agreed terms and conditions.

Yours Sincerely,

Sd/-

(S. Krishna Moorthy)  
 Second

May 7, 1997.

The General Secretary,  
 Pawan Hans Pilots Guild,  
 Mumbai.  
 Dear Sir,

In accordance with your request to me to act as an Arbitrator in a reference u/s. 10A of the Industrial Disputes Act, 1947 in the matter of the dispute between your Guild and the PHL management. I hereby consent to act as an Arbitrator on terms mutually agreed to between us.

Yours Sincerely,

(Hares M. Jagtiani)

[File No. L-11013(01)/97-IR (C-I)]  
 BRAJ MOHAN. Desk Officer

## ANNEXURE A

## Pawan Hans Pilot's Guild

PHPG/MOS/1076/09

Pawan Hans Limited, WR,  
 Mumbai

Chairman & Managing Director  
 Pawan Hans Helicopters Ltd.,  
 New Delhi

11 December, 96

Sir,

**Reference :** a. PHPG letter No. MOS : 1076 dated 31 Oct. 96.  
 b. MOS signed between PHPG and Management 12 June 96

As informed to the Management vide our above reference letter at (a); a fresh charter of demands' effective 01 Jan. 1997, comprising of those collectively projected by the members of our union and under an authority invested in us by our members is hereby served on you for your acceptance and immediate implementation.

Thanking you,

Yours faithfully,  
 A.P. PATI,  
 (General Secretary)

Encl : Annexure 1 : Charter of Demands  
 (Pages 1 to 15)

Appendix A : Ref Para 30

Appendix B : Ref. Para 31

Appendix C : Ref. Para 32

(ANNEXURE TO PHPG/MOS/1076/9 Dt. 11 DEC. 96)

### PHPG CHARTER OF DEMANDS

(EFFECTIVE 01 JAN. 1997)

#### **SCOPE**

1. The PHPG reserves its right to add, delete and to modify any demand from time to time.
2. The scope of this Charter of Demands' as submitted vide this letter though confined to/under the following sections and in principle being unlimited may be modified at discretion of PHPG.
  - a. General
  - b. FDTL
  - c. Air/Flight safety related
  - d. Training Licensing and Human Resource Development
  - e. Monetary
  - f. Operational
  - g. Procedural
  - h. Occupational
  - i. Infrastructural
  - j. Policy related
  - k. Health Recreational and Medical
  - l. Union Activity Related

#### **SECTION I : GENERAL**

3. An Agreement to be reached between the PHPG and the management of PHHL to settle these demands shall be valid for period of three years i.e. from 1st January 1997 to 31st December 1999.
4. The past benefits accruing to the workmen pilots as provided under the MOS signed between PHPG and Management on 12th June 96 and also those obtainable under current practices/policies to continue unaffected.

#### **SECTION II ; FDTL**

5. Flight and duty time limitations for pilots to be governed through following definitions from Para 6 to Para 10 to include sub-para's therein.
6. Flight Duty Time : To mean total time elapsed between commencement of duty and relief from duty.
7. Commencement of Duty : Shall be either of the following time whichever is earlier.
  - a. When the Pick up vehicle reports to the pilot at his place of rest.
  - b. Or when the pilot is first int'mated/informed instructed by his superior to remain stand by for impending flight.
  - c. Or one hour and thirty minutes prior to planned/rostered/scheduled departure.

**Relief from Duty :** shall be the time when the pilot is relieved from his all responsibilities towards aircraft, passengers Cargo, Post-flight checks, post-flight documentation. Debriefing of crew members in respect of last flight carried out to enable him to then proceed to his place of rest such that;

- a. A minimum of one hour after the last shut-off-engines time shall contribute towards the duty time.
- b. Whenever the flight is cancelled after the commencement of duty a minimum of thirty minutes after the cancellation time shall contribute towards duty time.

9. Rest Time : Shall be the period starting after 'Relief from Duty' of the last flight duty-up to the 'Commencement of Duty' in respect of next flight duty such that;
- Pilots after their duty may avail of their rest time at their respective places of rest.
  - A minimum rest time of 12 consecutive hours be available to pilot of which six shall mandatorily be between 2300 hrs. to 0500 hrs.
  - Two weekly off days be promulgated for each pilot.
  - All national/gazetted holidays shall constitute 'Rest time' for pilots.
10. Place of Rest : For the purposes of availing rest time and off days following shall be the designated rest places;
- For pilots on/ferry detachment duties—hotel where lodged or homes if applicable.
  - For pilots at performing duties at New Delhi, Mumbai and Bombay high/Adjacent Oil Fields their respective homes shall be the 'places of rest'.
11. Emergency : When a flight or any duty connected with flight is required for life saving would constitute to be an emergency.
12. Following shall be the maximum flight and duty time limitations in respect of pilot (to be read in conjunction with para 5 to para 11).

#### **MAXIMUM FLIGHT DUTY LIMITATIONS :**

a. Daily	
i. Max FDTL per day	8 hrs
ii. Extendable FDTL per day (in case of emergency)	10 hrs
b. FDTL per week	40 hrs
c. FDTL per month	167 hrs
d. FDTL per year	800 hrs
e. Weekly working days	5 days
f. All national/Gazetted holidays in a year shall be off days for pilots in addition to weekly off, and compensatory off days.	

#### **MAXIMUM FLIGHT TIME LIMITATIONS :**

a. Per day	6 hrs
b. Per week	20 hrs
c. Per month	60 hrs
d. Maximum number of landings per day	25 hrs

#### **SECTION III : AIR/FLIGHT SAFETY RELATED**

13. A DGCA duly approved operators manual for use guidance and compliance of pilots be available in the helicopter to be operated by your pilots and such a manual shall contain all types of operations and duties the pilot is tasked/detailed or rostered for.
14. In addition to duly approved operators manual following may be provided in the helicopter prior to start up for the flight.
- DGCA approved MEL.
  - Original Jeppesen Charts.
  - Relevant Maps and Charts.
  - Flight Bags to carry documents.
15. DGCA approved/authorised Air Traffic Controllers be appointed to control the Air Traffic in the airspace of Bombay High oil fields and its adjacent oil fields.
16. DGCA approved/authorised technical engineering personnel to supervise and carry out the following and any other mandatory checks and maintenance inspections at places where planned/schedule halts/stoppages occur.
- Refuelling
  - Pre-flight inspections and daily inspections.
  - Anti-sabotage checks

17. Flight Dispatch Service be provided to pilots prior to their flights. Amongst other normal functions of flight dispatch service, a written briefing to pilots be provided in respect of following.
- Destination/Task
  - ATC
  - Weather
  - Communications
18. A regular flight safety meeting (once in 2 months) be conducted with representatives from followings in attendance.
- PHPG
  - Management
  - DGCA
  - ONGC/Charterer
  - Aviation Medicine Expert
19. All pilots be sent regularly, at least once in six months on flight safety re-orientation course.

#### SECTION IV : TRAINING, LICENSING AND HUMAN RESOURCE DEVELOPMENT

- A refresher course at CTE Hyderabad be conducted in respect of each pilot and each pilot be sent on this course at least once in six month. This course to include training on IPT, Ground Studies, Sea Survival.
- Each pilot be afforded a minimum of 05:00 excluding IRT & Prof Check hours of continuation flying training, by the company in a year. This training to comprise of 03:00 hrs by day and 02:00 hrs by night.
- All flight training, clearances, check flights be conducted in accordance with DGCA approved syllabi and without any passenger.
- It shall be the responsibility of the Management to ensure that the necessary checks/formalities for endorsement/validation of licences of pilots are carried out well in time. Managements failure on this court shall entitle the pilots to all monetary benefits.
- Whenever a pilot completes the requisite number of hours qualifying the eligibility criteria laid down in the career progression profile, it shall be the responsibility of the Management to ensure that all necessary training/checks/formalities are completed well in advance. Any failure on the part of the Management shall entitle to concerned pilot to be deemed to have been promoted to the relevant higher grade from the date he would be eligible by the foregoing criteria and he shall be entitled to the Pay, allowances and all compensations and inter-se seniority on such basis.
- Each pilot be afforded by the company to undergo a basic computer course.
- Career prospects of the pilots is to be discussed mutually and finalised.
- More Check Pilots, Instructors and Examiners be appointed at the earliest in consultation with PHPG.

#### SECTION V : MONETARY

- The revised wages/allowances shall be applicable from 1st January 97 unless otherwise stipulated.
- The salary grades for pilots shall be revised effective 1st January '97 as follows :
 

a. Co-pilots/First Officer	Rs. 20000-500-25000 (or equivalent of E-4 whichever is higher)
b. Pilot/Captain	Rs. 25000-750-31000 (or equivalent of E-6 whichever is higher)
c. Commander	Rs. 30000-1000-40000 (or equivalent of E-7 whichever is higher)
d. Sr. Commander	Rs. 35000-1500-50000 (or equivalent to E-8 whichever is higher)
- Pilots be paid Productivity linked allowance each month depending of the years of service as per the table in Appendix A.
- Any pilot available to the company for 15 days or more in a calender month shall be eligible for flying allowance for the full month whether utilised by the company or not.
- Pilots shall be paid a fixed monthly flying allowance as per the table in Appendix B

32. When a pilot is utilised by the company to fly more than forty hours in any given month he shall be paid in addition to fixed minimum flyable allowance, an additional allowance for hours flown in excess of forty hours at hourly rates as per the table in Appendix C. Rostering of pilots be is to done equitably by the management leading to equal number of hours flown amongst pilots, who are utilised to fly more than forty hours in a month.
33. The management is to ensure that no pilot shall earn more than any pilot who is senior to him, provided both have been equally available for flying in that particular month. Otherwise the difference shall be paid to the senior pilot in addition to his entitlement.
34. When the pilot executes ten or more landings in an offshore Oil Support Operation, during the course of a single day, he shall be compensated, in addition to both fixed minimum flyable allowance and additional hourly variable allowance, an allowance per day amounting to Rs. 5000 for pilot in command endorsed on type of helicopter so flown and Rs. 2500 for the co-pilot if the co-pilot is not DGCA endorsed as pilot in command (To be read in conjunction with para 23 and 24).
35. Whenever the pilot flies on the synthetic flying simulator he shall be paid at the hourly rate applicable for actual flying and pilots availability for the simulator shall contribute towards his availability period during the month.
36. Whenever the pilot undertakes flying on training the trainee pilot if he is pilot in command endorsed on type shall stand eligible to be treated as available for Fixed minimum flyable allowance.

37. Other existing allowances shall be revised as follows :

a. Flying allowance	Rs. 7500 per month
b. KMA	Rs. 3000 per month
c. IR	Rs. 3000 per month
d. Off shore allowance	Rs. 5000 per month
e. Petrol	200 ltrs. per month
f. Telephone Reim.	actual or 1000 calls
g. Medical Reim.	3 months salary per year
h. DA	To be based on Rs. 2 neutralisation rate per point rise in CPI in (Base Year 1980)
i. HRA	50% of Basic salary
j. Company Lease accommodation	80% of basic salary
k. Command pay	Rs. 1500 per month per each type of a/c
l. Car Maintenance	Rs. 2000 per month
38. New allowances to be introduced as follows :	
a. RTR	Rs. 2000 per month
b. Furniture/Furnishing allowance	
1. Sr. Cdr/Cdr	Rs. 1 lakh per year
2. Capts.	Rs. 60000 per year
3. First Officer	Rs. 40000 per year
c. Fitness /Stress allowance	
1. Sr Cdr/Cdr	Rs. 5000 per month
2. Capts/First Officer	Rs. 3000 per month
39. Advances, Loans and Grants	
a. Festival Advance—3 months pay	
b. Salary Advance—3 months pay	
c. Maximum Car loan to be increased to 5 lakhs	
d. Maximum HBA to be increased to 10 lakhs	
e. Kit grant to be increased to 5000 per month	
40. Pension Scheme & Gratuity enhancement proposal being forwarded separately.	

### SECTION VI : OPERATIONAL

41. Whether the company shall at all times maintain the 'Standard Force/Manning Level' of the pilots which shall not be less than 5.5 pilots per air craft on company's inventory and on contract.
42. Whether a minimum of 15 days notice be given to all pilots of their flight schedules.
43. Whether following publications be issued by the company to each pilot.
  - a. AIP
  - b. AICs (updated with the amendments.)
  - c. Air craft rules 1937 (Latest addition)
  - d. DOC 4444
  - e. ICAO Annexure 6 (Helicopter Operations)
  - f. CARR 1 to 8
  - g. Operators Manual (DGCA approved and certified)
  - h. SOPs and Aircrews standing orders
  - i. Jeppesen's Manual and charts
44. Whether Workings hours and rest periods at Detachments will be such as are mutually agreed upon between management and PHPG.

### SECTION VII : PROCEDURAL

45. Whether the procedure for payment of all dues/earning accruable to the pilots to be simplified to the extent that the earnings etc. are directly credited in the salary slips of the pilots without the pilots having to claim separately.
46. Whether preparation of manifests to be done by commercial staff.

### SECTION VIII : OCCUPATIONAL

47. Whether scales for uniform per annum per pilot to be provided by the company be as follows:

a. Trousers	6 pairs
b. Shirts	8
c. Shoes	2 Pairs
d. Socks	6 Pairs
e. Belt Leather	2
f. Aviator Goggles	1 pair
g. Bag Leather (Air crew)	1
h. Pilots Wings	4
i. Shoulders Stripes	4 Pairs
j. Caps	3
k. Turbans for sikh pilots	5
l. Aircrew watch	1

48. Whether Winter Clothing be provided at followings columns per annum to each pilot.

a. Trouser Woollen	2 Pairs
b. Flying Jackets	2
c. Jersey Pullover	2
d. Woollen Socks	4
e. Blazer	1
f. Neck Ties with company Insignia	4

49. Whether Inconformity with ID Act all contractual pilots who are members of PHPG be made permanent at the earliest.

50. Whether Pilots be insured for Loss of Licence for Rs. 25 lakhs together with full employment in Pawan Hans Helicopters Ltd., without any conditions.

51. Whether in case of pilot's death, insurance risk covered by Rs. 25 lakhs along with employment to family member.
52. In case the pilot does not accept the job as per para 50 above then the Annuity Scheme be such that he be paid every month his full last pay drawn till the age of superannuation.
53. Company flats be provided to the pilots at the scales laid down at the earliest in following areas :
- New Delhi—Greater Kailash
  - Bombay—Juhu
54. Commanders and above will be entitled to Air Travel while on duty/free passage by first class and Captain and below by business class.
55. Hotel Accommodation in respect of Pilots be decided in consultation with PHPG and shall not be in a hotel rated less than 5 Star. The room entitlement will be as follows ;
- Commanders and above : Suites
- Captains and below : Deluxe room
56. Final and incidentals during pilots stay in hotel will be as per the actual tarif—
57. 5 free/Interlink passages per year be provided to each pilot and his family on Indian Airlines, Air India and other private domestic air lines.
58. Pick-up vehicle be provided for transportation of pilots to and from Hotel/ Residence and the concerned Airport.

#### SECTION IX : INFRASTRUCTRAL

59. Two personnel each from F & A and P & A department be attached in Operation Department in Western Region, along with necessary office equipment and computers to process pilots administrative and financial documents that are otherwise done by them from the separate building.
60. Flight attendant shall be provided to brief the passengers.
61. Ground training/instructors and training be provided to the pilots for obtaining higher aviation qualifications.

#### SECTION X : POLICY RELATED

62. As protocol PHPG office bearers/representatives be afforded opportunity to meet and be introduced to dignitaries and VIPs visiting Pawan Hans Limited Locations and intimation of same be informed to PHPG well in advance.
63. One PHPG representative be co-opted as an ex-officio member of Board of Directors and their meeting.
64. A joint task council of PHPG representatives and of Management be formed at the earliest to evolve various policies concerning the members of PHPG directly or indirectly.
65. A compendium of all letters, circulars, memos etc, concerning or affecting pilots directly or indirectly should be made available to PHPG and PHPG should be on regular mailing list of all such letters etc.

#### SECTION XI : HEALTH RECREATION AND MEDICAL

66. The pilots be provided block membership in reputed health/fitness institutes.
67. The reading rooms for pilots be provided with company-subscribed aviation related periodicals.
68. Following additional hospitals to be empanelled with Pawan Hans Ltd. in respect of pilots, their families and their dependents:
- Holly Spirit Hospital  
Mahakali Caves,
  - Holly Family Hospital  
Bandra
  - Wochart Hospital  
Cunningham Road, Bangalore
  - Dr. Vijay Lulla's Nursing Home and Hospital at Link Road, Andheri (West)

**SECTION XII : UNION ACTIVITY RELATED**

69. A total of 30 days leave in every year be provided to pilots who are the office-bearers of the PHPG.
70. Company will arrange and pay for three office-bearers of PHPG to visit all Bases of the Company each year.
71. An office within company premises along with necessary office equipment and office staff will be provided to PHPG.

**APPENDIX 'A'**

Refer to Para 30

**PRODUCTIVITY ALLOWANCE PER MONTH**

Years of Service	Co-Pilots	Pilot-in-Command
1	2	3
Upto 1 year	Rs. 10,000.00	Rs. 20,000.00
more than 1 yr. upto 2 yrs.	10,500.00	20,500.00
more than 2 yrs. upto 3 yrs.	11,000.00	21,000.00
more than 3 yrs. upto 4 yrs.	11,500.00	21,500.00
more than 4 yrs. upto 5 yrs	12,000.00	22,000.00
more than 5 yrs. upto 6 yrs.	12,500.00	22,500.00
more than 6 yrs. upto 7 yrs	13,000.00	23,000.00
more than 7 yrs. upto 8 yrs.	13,500.00	23,500.00
more than 8 yrs. upto 9 yrs.	14,000.00	24,000.00
more than 9 yrs. upto 10 yrs.	14,500.00	24,500.00
more than 10 yrs. upto 11 yrs.	15,000.00	25,000.00
more than 11 yrs. upto 12 yrs.	15,500.00	25,500.00
more than 12 yrs. upto 13 yrs.	16,000.00	26,000.00
more than 13 yrs. upto 14 yrs.	16,500.00	26,500.00
more than 14 yrs. upto 15 yrs.	17,000.00	27,000.00

**APPENDIX "B"**

Refer to Para 31

**FIXED FLYING ALLOWANCE PER MONTH**

Years of Service	Co-Pilots	Pilot-in-Command
1	2	3
Upto 1 year	Rs. 40,000.00	Rs. 80,000.00
more than 1 yr. upto 2 yrs.	45,000.00	85,000.00
more than 2 yrs. upto 3 yrs.	50,000.00	90,000.00
more than 3 yrs. upto 4 yrs.	55,000.00	95,000.00
more than 4 yrs. upto 5 yrs	60,000.00	100,000.00
more than 5 yrs. upto 6 yrs.	65,000.00	105,000.00
more than 6 yrs. upto 7 yrs.	70,000.00	110,000.00
more than 7 yrs. upto 8 yrs.	75,000.00	115,000.00

1	2	3
more than 8 yrs upto 9 yrs.	80,000.00	120,000.00
more than 9 yrs. upto 10 yrs.	85,000.00	125,000.00
more than 10 yrs. upto 11 yrs.	90,000.00	130,000.00
more than 11 yrs. upto 12 yrs.	95,000.00	135,000.00
more than 12 yrs. upto 13 yrs.	100,000.00	140,000.00
more than 13 yrs. upto 14 yrs.	105,000.00	145,000.00
more than 14 yrs. upto 15 yrs.	110,000.00	150,000.00

**APPENDIX "C"**

Refer to Para 32

**HOURLY ALLOWANCE**

Years of Service	Co-Pilots Rs./Hour	Pilot-In-Command Rs./Hour
1	2	3
Upto 1 year	1,000.00	2,000.00
more than 1 yr. upto 2 yrs.	1,125.00	2,125.00
more than 2 yrs. upto 3 yrs.	1,250.00	2,250.00
more than 3 yrs. upto 4 yrs.	1,375.00	2,357.00
more than 4 yrs. upto 5 yrs.	1,500.00	2,500.00
more than 5 yrs. upto 6 yrs.	1,625.00	2,625.00
more than 6 yrs. upto 7 yrs.	1,750.00	2,750.00
more than 7 yrs. upto 8 yrs.	1,875.00	2,875.00
more than 8 yrs. upto 9 yrs.	2,000.00	3,000.00
more than 9 yrs. upto 10 yrs.	2,125.00	3,125.00
more than 10 yrs. upto 11 yrs.	2,250.00	3,250.00
more than 11 yrs. upto 12 yrs.	2,375.00	3,375.00
more than 12 yrs. upto 13 yrs.	2,500.00	3,500.00
more than 13 yrs. upto 14 yrs.	2,625.00	3,625.00
more than 14 yrs. upto 15 yrs.	2,750.00	3,750.00

**ANNEXURE 'B'**

Pawan Hans Pilots' Guild

PHPG/COD/1706/18

16 April, 1997

Chairman cum Managing Director  
 Pawan Hans Helicopters Ltd.  
 Corporate Office  
 Safdarjung Airport  
 New Delhi-3

## CORRIGENDUM TO CHAPTER OF DEMANDS

1. Please refer to Paragraphs 1 and 2 of PHPG letter no. PHPG/MOS/1076 dated 11 Dec. 96 under which the COD effective 01 Jan 97 has been submitted; and the annexure 1 and Appendix A to C therein.
2. Kindly add/modify following demands to the above charter of Demands and renumbered accordingly as indicated :—
  - a. 4 (a):— Following deductions at source be made from the arrears accruing from monetary settlements of these demands in respect of each pilot and be paid to Pawan Hans Pilots Guild :—
    - i. Non-PHPG Members—10 percent of Arrears
    - ii. PHPG Members —05 percent of Arrears
  - b. 40 :—Amended to read :—Pension scheme and Graduity scheme to be as in Indian Airlines and Air India.
  - c. 41(a) :—Cost per pilot to Pawan Hans Helicopters Ltd. must be determined and whenever there is any shortage of pilots the savings on this account shall be distributed equally amongst all pilots based on following formula :—  
 Cost to the company per pilot multiplied by shortage (Number of Pilots) divided by total number of pilots.
  - d. 49(a) :—All contractual pilots of Pawan Hans Helicopters Limited who are members of PHPG be entitled all the benefits arising out of settlements of Charter of Demands of PHPG.
  - e. 52(a) :—No pilot be grounded without prior concert of PHPG.

Thanking you.

Yours faithfully,

A.P. PATI, General Secretary